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February 25, 2021

PUBLIC VERSION

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company

Dear Ms. Brown:

Enclosed for e-filing in the above-referenced proceeding is a public version of a Minor Application pursuant to 49 U.S.C. §§ 11323(a)(1), (3), (4), and (5) and 49 C.F.R. Part 1180, with appropriate redactions that the Board can place in its docket. We are concurrently filing a Motion for Protective Order, along with a highly confidential version of the Application, to be filed under seal.

Filed along with this Application in sub-dockets to this Finance Docket are directly related requests for Board authority.

The filing fee of \$9,200 was paid using pay.gov. Please contact me with any questions.

Cynthia T. Brown
February 25, 2021
Page 2

Respectfully submitted,

/s/ Anthony J. LaRocca

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Enclosures

cc: Louis E. Gitomer
All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.

—CONTROL AND MERGER—

PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

APPLICATION

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Dated: February 25, 2021

TABLE OF CONTENTS

| | |
|---|----|
| INTRODUCTION AND SUMMARY OF APPLICATION..... | 2 |
| I. THE PROPOSED TRANSACTION IS MINOR | 9 |
| II. PROPOSED SCHEDULE | 14 |
| III. INFORMATION PROVIDED IN RESPONSE TO BOARD REGULATIONS | 14 |
| <i>Section 1180.6 Supporting Information</i> | 14 |
| (i) A summary of the proposed transaction and contact information for applicants and their counsel. | 14 |
| (ii) The proposed time schedule for consummation of the proposed transaction. | 16 |
| (iii) The purpose sought to be accomplished by the proposed transaction. | 16 |
| (iv) The nature and amount of any new securities or other financial arrangements. | 16 |
| (2) A discussion of the public interest justifications in support of the application. | 16 |
| (i) The effect of the transaction on inter- and intramodal competition..... | 17 |
| (ii) The financial consideration involved in the proposed transaction, and any economies to be effected. | 17 |
| (iii) The effect of the increase of total fixed charges resulting from the proposed transaction. | 18 |
| (iv) The effect of the proposed transaction upon the adequacy of transportation service to the public..... | 18 |
| (v) The effect of the proposed transaction upon applicants' employees. | 19 |
| (vi) The effect of inclusion in the proposed transaction of other railroads in the territory. | 21 |
| (3) Any other supporting or descriptive statements applicants deem material..... | 21 |
| (4) An opinion of applicants' counsel..... | 25 |
| (5) A list of the State(s) in which any part of the property of applicants is situated..... | 26 |
| (6) Map (exhibit 1). | 26 |
| (7) Explanation of the transaction. | 26 |

| | |
|---|----|
| (i) Description of the nature of the transaction, significant terms and conditions, and the consideration to be paid. | 26 |
| (ii) Agreement (exhibit 2). | 27 |
| (iii) Information on proposed consolidation or merger..... | 27 |
| (iv) Court order (exhibit 3). | 28 |
| (v) Statement regarding the property involved in the proposed transaction. | 28 |
| (vi) Description of principal routes and termini of the lines, principal points of interchange, and amount of mileage. | 28 |
| (vii) Statement regarding governmental financial assistance. | 34 |
| (8) Environmental data (exhibit 4). | 34 |
| (i) The effect of the proposed action on transportation of energy resources. | 35 |
| (ii) The effect of the proposed action on recyclable commodities..... | 36 |
| (iii) The effect of the proposed action in overall energy efficiency. | 36 |
| (iv) Statement regarding diversions from rail to motor carriage. | 36 |
| <i>Section 1180.8 Operational Data</i> | 38 |
| (c) Operating plan-minor (exhibit 15)..... | 38 |
| (1) Traffic level density on lines proposed for joint operations..... | 38 |
| (2) Impacts on commuter or other passenger service | 38 |
| (3) Operating economies..... | 39 |
| (4) Anticipated discontinuances or abandonments. | 39 |

INDEX TO APPENDIXES AND EXHIBITS

APPENDIXES

- Appendix 1 Impacts of the proposed transaction upon carrier employees.
- Appendix 2A Opinion of Counsel for CSX Corporation and CSX Transportation, Inc.
- Appendix 2B Opinion of Counsel for Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company and Vermont & Massachusetts Railroad Company.

EXHIBITS

- Exhibit 1 Maps.
- Exhibit 2 Agreement between Applicants.
- Exhibit 3 Court Order. Not applicable.
- Exhibit 4 Environmental Information. Not Required per 49 CFR 1105.6(c)(1).
- Exhibit 15 Minor Transaction Operating Plan.
- Exhibit 22 Verified Statements of Mr. Sean Pelkey; Dr. David Reishus; Dr. William Huneke.
- Exhibit 23 Support Letters.

TABLE OF ABBREVIATIONS

| | |
|--------------------------|--|
| 747 Merger Sub 1 | 747 Merger Sub 1, Inc. |
| 747 Merger Sub 2 | 747 Merger Sub 2, Inc. |
| Amtrak | National Railroad Passenger Corporation |
| B&E | Pittsburgh & Shawmut Railroad, LLC, doing business as Berkshire & Eastern Railroad |
| Board or STB | Surface Transportation Board |
| Boston & Maine | Boston and Maine Corporation |
| CN | Canadian National Railway Company |
| CP | Canadian Pacific Railway Company |
| CSX | CSX Corporation and CSX Transportation, Inc. |
| CSXC | CSX Corporation |
| CSXT | CSX Transportation, Inc. |
| GWI | Genesee & Wyoming Inc. |
| Mr. Mellon | Timothy Mellon, as Shareholder Representative |
| Maine Central | Maine Central Railroad Company |
| MassDOT | Massachusetts Department of Transportation |
| MBTA | Massachusetts Bay Transportation Authority |
| Merger Agreement | Agreement and Plan of Merger dated as of November 30, 2020 |
| NECR | New England Central Railroad |
| Northern | Northern Railroad |
| NSR | Norfolk Southern Railway Company |
| NSR Settlement Agreement | Settlement Agreement between CSXT and NSR |

| | |
|------------------------|---|
| P&W | Providence and Worcester Railroad Company |
| PAR | Pan Am Railways, Inc. |
| PAR Railroads | Boston and Maine Corporation, Maine Central Railroad Company, Portland Terminal Company, Springfield Terminal Railway Company, Northern Railroad, Stony Brook Railroad Company and Vermont and Massachusetts Railroad Company |
| PAR System | Rail system over which the PAR Railroads own rail lines and provide rail service |
| PAS | Pan Am Southern LLC |
| PAS Formation Decision | <i>Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC</i> , FD 35147 et al. (STB served Mar. 10, 2009) |
| Portland Terminal | Portland Terminal Company |
| Related Transactions | Transactions requiring STB authorization contemplated in NSR Settlement Agreement and Term Sheet Agreement |
| Sellers | Timothy Mellon, as Shareholder Representative, and Pan Am Systems, Inc. |
| SMS | SMS Rail Lines of New York, LLC |
| Springfield Terminal | Springfield Terminal Railway Company |
| STB or Board | Surface Transportation Board |
| Stony Brook | Stony Brook Railroad Company |
| Systems | Pan Am Systems, Inc. |
| Term Sheet Agreement | Term Sheet Agreement among CSXT, NSR and GWI |
| V&M | Vermont and Massachusetts Railroad Company |

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.

—CONTROL AND MERGER—

PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD, PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND VERMONT & MASSACHUSETTS RAILROAD COMPANY

APPLICATION

CSX Corporation (“CSXC”), a non-carrier, and CSX Transportation, Inc. (“CSXT”), a Class I railroad,¹ and 747 Merger Sub 2, Inc. (“747 Merger Sub 2”), a non-carrier, Pan Am Systems, Inc. (“Systems”), Pan Am Railways, Inc. (“PAR”), Boston and Maine Corporation (“Boston & Maine”), Maine Central Railroad Company (“Maine Central”), Northern Railroad (“Northern”), Portland Terminal Company (“Portland Terminal”), Springfield Terminal Railway Company (“Springfield Terminal”), Stony Brook Railroad Company (“Stony Brook”), and Vermont & Massachusetts Railroad Company (“V&M”) (collectively, “Applicants”), file this minor application pursuant to 49 U.S.C. §§ 11323(a)(1), (3), (4), and (5) and 49 C.F.R. Part 1180 (the “Application”) seeking approval from the Surface Transportation Board (“STB” or the

¹ CSXT is a wholly-owned subsidiary of CSXC. CSXC and CSXT are referred to collectively herein as “CSX.” CSXC also controls the following railroads indirectly through CSXT: Allegheny and Western Railway Company, The Baltimore and Cumberland Valley Rail Road Extension Company, The Baltimore and Ohio Chicago Terminal Railroad Company, The Carrollton Railroad, Dayton and Michigan Railroad Company, Fruit Growers Dispatch, Inc., Fruit Growers Express Company, The Indiana Railroad Company, The Lake Erie and Detroit River Railway Company, North Charleston Terminal Company, Richmond, Fredericksburg and Potomac Railway Company, St. Lawrence & Adirondack Railway Company, The Staten Island Railroad Corporation, The Toledo Ore Railroad Company, and TransKentucky Transportation Railroad, Inc.

“Board”): (1) for CSXC, CSXT, and 747 Merger Sub 2 to control the railroads controlled by Systems, a non-carrier, and PAR, a direct subsidiary of Systems and a non-carrier, and (2) CSXT to merge the railroads identified below into CSXT.

Filed along with this Application in sub-dockets to this Finance Docket are directly related and pro-competitive requests for Board authority from Norfolk Southern Railway Company (“NSR”) to operate up to one pair of intermodal and automotive trains daily under trackage rights over CSXT’s line that runs to the south of the Pan Am Southern LLC (“PAS”) route into the Boston MA area, and for Pittsburg & Shawmut Railroad, LLC, doing business as Berkshire & Eastern Railroad (“B&E”), a wholly-owned subsidiary of Genesee & Wyoming Inc. (“GWI”), to operate PAS in lieu of Springfield Terminal upon consummation of the proposed transaction, as more fully described further below. Applicants request that the Board consider those related requests as part of the Board’s consideration of this Application.

INTRODUCTION AND SUMMARY OF APPLICATION

In an Agreement and Plan of Merger dated as of November 30, 2020 (the “Merger Agreement”), CSXC and two wholly-owned subsidiaries, 747 Merger Sub 1, Inc. (“747 Merger Sub 1”), and 747 Merger Sub 2, agreed with (1) Systems, and (2) Timothy Mellon, as Shareholder Representative (“Mr. Mellon,” and collectively with Systems, the “Sellers”), for CSXC to acquire Systems, including the rail carriers owned or controlled by Systems.

Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns two rail carriers: Northern and Stony Brook. Boston & Maine also owns a 98% interest in V&M. Collectively, these seven rail carriers (referred to herein as the “PAR Railroads”) own rail lines and provide rail service on a rail system (the “PAR

System”) in New England from Maine in the north to the Boston region in the south. Springfield Terminal operates rail service on the PAR System on behalf of the PAR Railroads pursuant to leases over lines owned and leased by the other PAR Railroads, and none of the other PAR Railroads currently operates.

Boston & Maine also owns a 50% interest in the Class II rail carrier PAS, a 50/50 joint venture between Boston & Maine and NSR. PAS provides rail service between upstate New York and Boston and between Vermont and Connecticut. Springfield Terminal, also a Class II rail carrier, operates PAS as PAS’s agent.

Sellers engaged in a competitive auction for the purchase of Systems, and CSXC was the successful bidder. Under the Merger Agreement, the following events will occur upon closing, which will occur after Board approval is obtained: Systems will be merged with 747 Merger Sub 1, with Systems surviving. Immediately thereafter, Systems will be merged with and into 747 Merger Sub 2, with 747 Merger Sub 2 surviving and the separate corporate existence of Systems ceasing. 747 Merger Sub 2 as the surviving corporation will be renamed Pan Am Systems, Inc. and will be a wholly-owned subsidiary of CSXC. Concurrent with Closing, CSXC will contribute Pan Am Systems, Inc. and all of its subsidiaries to CSXT. CSXT will thereafter control the rail carrier subsidiaries of Pan Am Systems, Inc. and at a future time, yet to be determined, will merge those subsidiaries, except V&M, into CSXT. These events are referred to herein as the “Proposed Transaction.”

In connection with the Proposed Transaction, Applicants seek the following Board authority through this Application:

- (1) **PAR Railroads Control Authority.** Pursuant to 49 U.S.C. §§ 11323(a)(4) and (5), CSXC, CSXT, and 747 Merger Sub 2, seek authority to control the following

rail carriers: Boston & Maine, Maine Central, Northern, Portland Terminal, Springfield Terminal, Stony Brook, and V&M.

- (2) **PAR Railroads Merger Authority.** Pursuant to 49 U.S.C. § 11323(a)(3), CSXT seeks authority to merge the following rail carriers into CSXT: Boston & Maine, Maine Central, Northern, Portland Terminal, Springfield Terminal, and Stony Brook. CSXT intends to exercise the requested merger authority at a future time, yet to be determined. CSXT does not request merger authority with respect to V&M because Boston & Maine does not wholly own V&M.
- (3) **PAS Control Authority.** Pursuant to 49 U.S.C. §§ 11323(a)(4) and (5), CSXC, CSXT, and 747 Merger Sub 2, seek authority to jointly control PAS. When the Proposed Transaction is consummated, CSXT will wholly own and control Boston & Maine, which owns 50% of PAS. When PAS was created, Boston & Maine and NSR were given authority to jointly control PAS within the meaning of 49 U.S.C. § 11323. *See Norfolk S. Ry.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 et al. (STB served Mar. 10, 2009) (the “PAS Formation Decision”). Since CSXT will acquire Boston & Maine, CSXT seeks the same joint control authority over PAS that was granted to Boston & Maine in the *PAS Formation Decision*.²

Related to but separate from the Proposed Transaction, CSXT, NSR, and GWI have entered into agreements that will strengthen PAS as an independent rail route for access to rail shippers in New England and enhance rail competition in New England. There are two

² Applicants acknowledge that CSXT’s ownership of Boston & Maine and its one-half interest in PAS may not result in Applicants acquiring “control” of PAS, as defined in 49 U.S.C. § 10102(3). Nevertheless, Applicants seek this control authority out of an abundance of caution.

agreements, a Settlement Agreement between CSXT and NSR which includes an agreement relating to operations at Ayer, MA (“NSR Settlement Agreement”), and a Term Sheet Agreement among CSXT, NSR and GWI (“Term Sheet Agreement”). These agreements are contained as exhibits to the Verified Statement of Mr. Sean Pelkey, CSXT’s Vice President, Finance & Treasury. These two agreements contemplate transactions requiring STB authorization (“Related Transactions”) that are related to the Proposed Transaction. Pursuant to the Related Transactions, (1) NSR will obtain trackage rights over existing lines owned by four railroads (CSXT, PAR Railroads, a GWI subsidiary, and PAS) to allow NSR additional flexibility with respect to NSR’s existing service to intermodal and automotive facilities at Ayer, MA, and (2) B&E, currently a Class III rail carrier and a wholly-owned subsidiary of GWI, will replace Springfield Terminal as the operator of PAS.

The terms of the Related Transactions are described in more detail below and in materials supporting this Application. As explained below, the agreements with NSR and GWI and the Related Transactions arising out of those agreements will prevent any potential adverse competitive effects with respect to PAS associated with the Proposed Transaction, which includes the acquisition by CSXT of a 50% interest in PAS and the acquisition by CSXT of Springfield Terminal, the current contract operator of PAS. Additionally, the Related Transactions, combined with the Proposed Transaction, will substantially enhance competition by improving access to New England over multiple rail routes. The Applicants anticipate consummating the Proposed Transaction and the Related Transactions at the same time, subject to Board approval of each transaction. However, if the Proposed Transaction is consummated prior to the replacement of Springfield Terminal by B&E and the initiation of PAS operations by

B&E, CSXT, NSR, and GWI have agreed that Springfield Terminal will continue to operate PAS until Springfield Terminal is replaced as the PAS operator.³

In connection with the Related Transactions, the following requests for Board authority are being submitted in sub-dockets:

- (1) **NSR Trackage Rights Authority.** Pursuant to 49 U.S.C. § 11323(a)(6), NSR is filing notices of exemption in FD 36472 (Sub-No. 1), FD 36472 (Sub-No. 2), FD 36472 (Sub-No. 3), and FD 36472 (Sub-No. 4) to obtain the necessary STB authority to enter into four trackage rights agreements with, respectively, CSXT, Providence and Worcester Railroad Company (“P&W”), Boston & Maine, and PAS. These trackage rights agreements will allow NSR, upon consummation of the Proposed Transaction, to move up to one train pair per day, carrying intermodal and automotive vehicles traffic, between NSR’s connection with CSXT near Voorheesville, NY, and the intermodal terminal located near Ayer, MA, over CSXT’s east-west rail line between Voorheesville, NY and Worcester, MA, then over P&W’s rail line between Worcester, MA and Barbers Station, MA, over Boston & Maine’s rail line between Barbers Station, MA and Harvard, MA, and finally over PAS’s rail line between Harvard and Ayer. In addition, NSR, on behalf of SMS Rail Lines of New York, LLC (“SMS”) and with SMS’s consent, is filing a notice of discontinuance in *SMS Rail Lines of New York, LLC—Discontinuance of Lease and Operations Authority—In Albany County, NY, AB-1312X*, to obtain the necessary STB authority for SMS to discontinue the operating rights of SMS over the Voorheesville Running Track.

³ {}
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- (2) **B&E Operating Authority.** Pursuant to 49 U.S.C. § 11323(a)(2) and 49 U.S.C. § 10502, B&E is filing a petition for exemption in FD 36472 (Sub-No. 5) to obtain the necessary STB authority to replace Springfield Terminal as operator of PAS.

The Proposed Transaction and the Related Transactions will result in a realignment of the rail network in New England that will be a major step forward in providing transportation options for New England rail shippers. Applicants anticipate that the Proposed Transaction will allow CSXT to improve rail service and to provide efficient competitive rail service within New England and between New England and CSXT's existing service area in the United States east of the Mississippi River. The Proposed Transaction will also enable CSXT to efficiently interchange traffic to and from New England with the western railroads.

CSXT will bring to New England rail users its best-in-class rail service and its dynamic operating model that has set new standards for safety⁴ and service performance with higher velocity, faster equipment turns and greater consistency.⁵ CSXT will be able to offer rail customers in New England unprecedented visibility into their supply chain through the easy to use ShipCSX platform that enables them to track and manage their shipments with much greater precision and confidence. Improved service, increased reliability and highly consistent rail operations will enhance competition, remove truck traffic from congested highways and provide substantial public benefits to New England.

There will be no adverse impact on competition. When considered together with the Related Applications, CSXT's acquisition of the PAR Railroads is an end-to-end combination of

⁴ In 2020, CSXT set a new company record for the fewest number of FRA reportable personal injuries, had the lowest injury rate (0.81) for all Class I railroads, and has lead the industry two years in a row.

⁵ CSXT led the industry in 2020 for average train velocity and terminal dwell metrics reported to the STB. CSX's 2020 averages for line of road train velocity (25.4 mph) and terminal dwell (18.8 hours) are better than the company ever performed in a single week prior to 2018.

two railroad networks. CSXT currently connects and interchanges traffic with the PAR System at Barbers Station, MA. It is well recognized that transactions connecting end-to-end carriers generally enhance competition and are unlikely to present competitive concerns.

Only four existing shipper facilities have access to both CSXT and the PAR System. As discussed below, CSXT has committed to ensuring the continued access to multiple rail carriers for those shippers by establishing a switching arrangement to reach PAS. In addition, CSXT is committing to keeping open existing gateways on the PAR System on commercially reasonable terms and to ensuring access to rate regulation remedies if shippers located on the existing PAR System are dissatisfied with rates for connections to other railroads. CSXT requests that the Board impose these commitments as conditions to approval of the Proposed Transaction.

The acquisition of Boston & Maine's interest in PAS will also have no adverse impact on competition. CSXT has ensured that there will be no anticompetitive effects by entering into an agreement with NSR and B&E to have Springfield Terminal replaced by B&E as operator of PAS. B&E will be responsible for setting rates on PAS in a non-discriminatory fashion as to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS. In addition, CSXT has entered into a Settlement Agreement with NSR, described further below, that will result in enhanced competition in the region. CSXT requests that the Board impose the terms of that Settlement Agreement, which addresses a number of competitive issues, as a condition to its approval of the Proposed Transaction.

Applicants are filing this Application as a minor transaction because it is clear that the Proposed Transaction, as enhanced by the Related Transactions, will have no adverse impact on competition. In addition, Applicants explain below that rail operations are not expected to change in ways that would require environmental studies or mitigation or that would have any

adverse impact on existing passenger service. As to labor, Applicants request that the standard employee protective conditions established in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), be imposed on the Proposed Transaction to ensure that any adverse impact from the Proposed Transaction on current employees is addressed.

This Application is organized as follows: Section I explains why the Proposed Transaction is a minor transaction. Section II contains a proposed schedule for this proceeding. Section III provides the specific information required by the Board’s regulations and shows that there are no competitive issues raised by the Proposed Transaction that have not been resolved by CSXT’s commitments or the Related Transactions. In addition, Applicants have developed an Operating Plan (Exhibit 15) showing that the Proposed Transaction and the Related Transactions will not result in any new operations exceeding any of the environmental or historic limits in 49 C.F.R. §§ 1105.7(e)(4) and (5) and 49 C.F.R. §§ 1105.8(b)(1) and (2). Verified Statements are included in Exhibit 22 and letters of support are in Exhibit 23. Applicants respectfully request that the Board approve the Proposed Transaction and the Related Transactions.

I. THE PROPOSED TRANSACTION IS MINOR

The Proposed Transaction is a minor transaction, as that term is defined in the Board’s regulations at 49 C.F.R. § 1180.2(c).

The Board’s regulations classify proposed transactions as “major,” “significant” and “minor.” The Proposed Transaction is not a “major” transaction because it does not involve the control or merger of two Class I railroads. *See* 49 C.F.R. § 1180.2(a). CSXT is a Class I railroad, while the PAR Railroads and PAS are all Class II or III railroads. The Proposed Transaction also is not a “significant” transaction. A significant transaction is a transaction that is not a “major” transaction and “that is of regional or national transportation significance as that

phrase is used in 49 U.S.C. 11325(a)(2) and (c).” 49 C.F.R. § 1180.2(b). The Board’s rules provide that a transaction is **not** significant (and therefore is minor):

if a determination can be made either: (1) That the transaction clearly will not have any anticompetitive effects, or (2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction’s anticipated contribution to the public interest in meeting significant transportation needs.

Id. Furthermore, a transaction “is significant if neither such determination can clearly be made.”

Id.

This Application establishes that the Proposed Transaction “will not have any anticompetitive effects” or that any anticompetitive effects of the Proposed Transaction “will clearly be outweighed by the [Proposed Transaction’s] anticipated contribution to the public interest in meeting significant transportation needs.” 49 C.F.R. § 1180.2(b). Therefore, the Proposed Transaction is not significant, and consequently is “minor.”

Applicants’ expert economist, Dr. David Reishus, explains why it is clear that the Proposed Transaction, with commitments that CSXT is making, will not have any adverse impact on competition. Among other things, Dr. Reishus explains that:

- No shipper will experience a reduction in the number of serving carriers;
- No existing routes will be closed;
- No existing interchange options will be eliminated;
- None of the short lines that connect with the PAR Railroads to be acquired will lose a connecting alternative;
- No Class I railroad that currently has access to rail customers in New England will lose that access; and
- CSXT will commit to keeping open existing gateways on commercially reasonable terms and to ensuring access to rate regulation remedies if shippers are dissatisfied with rates for connections to other railroads.

Dr. Reishus further explains that the agreements with NSR and GWI and the Related Transactions arising out of those agreements will ensure that no adverse competitive impact will result from CSXT's acquisition of (1) Springfield Terminal, the contract operator of and rate-setter for PAS, and (2) Boston & Maine and its 50% interest in PAS. As Dr. Reishus explains, the Related Transactions will result in B&E, not Springfield Terminal or CSXT, operating PAS and setting rates for PAS in a non-discriminatory fashion. The agreements with NSR and GWI will eliminate the possibility that the Proposed Transaction could result in CSXT operations and pricing power over two generally parallel lines (PAS and the existing CSXT east-west mainline in Massachusetts).

Additionally, Dr. Reishus explains that the operation of PAS by B&E will not have an adverse impact on competition as a result of B&E interacting with other New England railroads under common control with B&E. Dr. Reishus explains that while there are two rail shippers and a shortline railroad that currently are served by both PAS and a carrier that is part of the GWI corporate family, CSXT and NSR, as owners of PAS, have agreed to price and haulage concessions for those shippers and the shortline railroad that will preserve existing competitive options. Dr. Reishus further describes several aspects of the agreements that will substantially enhance rail competition in New England.

The CSXT commitments and agreements producing the Related Transactions will not only eliminate any potential adverse competitive effects of the Proposed Transaction, but will make the Proposed Transaction pro-competitive. Therefore, as the Board has previously concluded, the agreements entered by CSXT to enhance competition confirm that the Proposed Transaction is a minor transaction. *See, e.g., Norfolk S. Ry. Co.—Acquisition and Operation—*

Certain Rail Lines of the Del. and Hudson Ry. Co., Inc., FD 35873, slip op. at 7-8 (STB served Dec. 16, 2014) (“*NS/D&H*”).

Since the Board can find that the Proposed Transaction will clearly not have adverse competitive effects, the Board need not consider the public benefits that will result from the Proposed Transaction in order to classify the Proposed Transaction as a minor transaction. However, even if the Board could not determine that there would clearly be no adverse competitive effects, the Board still can classify the Proposed Transaction as a minor transaction if any adverse competitive effects “will clearly be outweighed by the [Proposed Transaction’s] anticipated contribution to the public interest in meeting significant transportation needs.” 49 C.F.R. § 1180.2(b). Here, the public benefits from the Proposed Transaction are significant and obvious and clearly outweigh any potential adverse competitive effects.

CSX’s Vice President, Finance & Treasury, Mr. Sean Pelkey, explains in his attached Verified Statement that the Proposed Transaction will substantially improve rail service and operations in New England. CSXT and the PAR System already have a substantial amount of interchange business between them. In fact, CSXT is already the single largest Class I railroad with whom the PAR System currently does business. The Proposed Transaction therefore unifies two already interconnected rail networks to produce efficient single-line service. Shippers on both the PAR System and on CSXT will see expanded market opportunities if the two systems are unified. In addition, CSXT will bring to New England rail users its best-in-class rail service, the benefits of its dynamic operating model, and new and unprecedented visibility into shippers’ supply chains. Improved service, increased reliability and highly consistent rail operations will enhance competition, remove truck traffic from congested highways and provide substantial public benefits to New England. Customers are looking forward to CSXT service

and direct access to its highly efficient network, as shown by the 58 support letters included with this Application (see Exhibit 23).

In addition, with the Related Transactions, operation of PAS will be carried out by B&E, a wholly-owned subsidiary of GWI, which already controls four railroads that operate in New England today: New England Central Railroad, Providence and Worcester Railroad, Connecticut Southern Railroad, and St. Lawrence & Atlantic Railroad. Accordingly, GWI has substantial experience and familiarity with the New England rail market and will be able to bring its quality service to rail shippers on PAS. B&E's ability to share resources and facilities among its commonly-owned rail carriers will create opportunities for efficiencies and cost savings that will produce public benefits.

Moreover, the benefits for the public on the PAR System and PAS will not be offset by any operating dislocations. While CSXT expects rail traffic on the PAR System to grow over time, CSXT does not expect to make any significant changes in traffic routes or traffic volumes in the next few years. With respect to PAS, the agreements reached with NSR and GWI involve capacity additions in the vicinity of Ayer, MA, and the establishment of operating protocols that will improve the efficiency and reliability of operations on PAS. Further, the only significant operating change involves the diversion of one NSR intermodal train pair from PAS lines to CSXT's roughly parallel lines, potentially freeing up further capacity on the PAS lines. In other respects, B&E will simply take over operations of PAS that today are conducted by Springfield Terminal, without any expected change in traffic flows.

While the lack of anticompetitive effects is enough to classify the Proposed Transaction as "minor," the extensive public benefits for rail shippers and the communities served by the PAR System and PAS further justify the classification of this Proposed Transaction as "minor."

II. PROPOSED SCHEDULE

CSXT proposes the following schedule in accordance with the requirements of 49 U.S.C. § 11325 and 49 C.F.R. § 1180.6(a)(1)(ii):

| DATE | ACTION |
|------|--|
| 1 | Application filed with Board and served. Motion for Protective Order filed with Board. |
| 30 | Board accepts application and establishes schedule. Discovery begins. |
| 45 | Notices of intent to participate must be filed with the Board. |
| 60 | Comments due from all parties, including the Attorney General and Secretary of Transportation, on the transportation merits of the Proposed Transaction. |
| 90 | Responses to comments on the transportation merits of the Proposed Transaction due. Applicants' rebuttal in support of the application due. |
| 135 | Close of record. |
| 180 | Board serves final decision. |
| 210 | Board decision becomes effective. |

III. INFORMATION PROVIDED IN RESPONSE TO BOARD REGULATIONS

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4, Applicants submit the following information:

Section 1180.6 Supporting Information

(i) A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

The Proposed Transaction is described fully above and incorporated herein by reference. In summary, CSXT will obtain control of the PAR Railroads and eventually merge all but one into CSXT, bringing to New England rail users CSXT's best-in-class rail service, the benefits of

its dynamic operating model, and new and unprecedented visibility into shippers' supply chains. At the same time, B&E will take over operations of PAS. Once necessary upgrades to the route between Voorheesville and Ayer are completed for NSR service, at NSR's expense, NSR will be able to operate up to one train pair per day carrying intermodal and automotive vehicles between Voorheesville and Ayer to improve NSR's access to the Boston area.

Applicants and their business addresses are:

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Pan Am Systems, Inc.
1700 Iron Horse Park
North Billerica, MA 01862
(978) 502-8194

Questions and correspondence concerning this application may be addressed to:

For CSX:

Steven C. Armbrust
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Peter W. Denton
Steptoe & Johnson LLP
1330 Connecticut Ave. NW
Washington DC 20036
(202) 429-6445
pdenton@steptoe.com

For Systems, PAR, Boston & Maine, Maine Central, Northern, Portland Terminal, Springfield Terminal, Stony Brook, and V&M:

Robert B. Culliford
Pan Am Systems, Inc.
1700 Iron Horse Park
North Billerica, MA 01862
(978) 502-8194
rculliford@panamrailways.com

(ii) The proposed time schedule for consummation of the proposed transaction.

Pending Board authorization, Applicants seek to consummate the Proposed Transaction before the end of 2021.

(iii) The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

The Proposed Transaction will result in operating economies, improved service, and improved financial viability of the PAR System. The Related Transactions involving PAS will ensure the continued long-term viability of PAS as an independent route for rail traffic moving to and from New England. The purposes sought to be accomplished and the benefits of the Proposed Transaction and the Related Transactions are discussed in detail in the accompanying Verified Statement of Mr. Pelkey, which is incorporated herein by reference.

(iv) The nature and amount of any new securities or other financial arrangements.

CSXC will not issue new securities in connection with the Proposed Transaction. The purchase price for Systems will be paid by CSXC through a combination of cash and CSXC stock as detailed in definitions of Base Merger Consideration, Cash Merger Consideration, Merger Shares, Stock Adjustment, and Stock Price in the Merger Agreement.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the proposed transaction is consistent with the public interest, with particular regard to the relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see §1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

The relevant market involves surface transportation in New England to and from locations in Maine in the north, upstate New York in the west, New Haven, CT in the south, White River Jct., VT in north central New England, and the Boston region in the east. The introduction of CSXT's single-line service into New England through the Proposed Transaction will significantly increase the ability of the PAR System, once it is integrated into the CSXT system, to provide intermodal competition. The Related Transactions regarding PAS will enhance intramodal and intermodal competition. Applicants' economic expert, Dr. Reishus, explains there will be no lessening of competition, creation of a monopoly, or restraint of trade in the relevant market. The Verified Statement of Dr. Reishus is incorporated herein by reference.

(ii) The financial consideration involved in the proposed transaction, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the proposed transaction.

CSXC will purchase the stock of Systems from the Sellers for a combination of cash and stock pursuant to the terms of the Agreement. The purchase price is \${{REDACTED}} consisting of {{REDACTED}}% cash and {{REDACTED}}% CSXC stock {{REDACTED}}.

While CSXT expects that rail operations in New England will become much more efficient as a result of the Proposed Transaction, CSXT is not able to quantify the benefits in terms of cost savings or increases in net revenue at this time. CSXT also expects that rail traffic will increase organically over time as CSXT integrates the existing CSXT and PAR System networks, implements its operating model, and makes capital improvements, but CSXT does not expect significant traffic increases to occur in the next few years.

(iii) The effect of the increase, if any, of total fixed charges resulting from the proposed transaction.

CSXT does not expect an increase in fixed charges as a result of the Proposed Transaction.

(iv) The effect of the proposed transaction upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

As evidenced by the support letters in Exhibit 23, the Proposed Transaction and Related Transactions will improve rail service in New England. Essential transportation services will be preserved.

Indeed, the agreements that CSXT has entered into with NSR and GWI and the Related Transactions arising from those agreements will result in a significant improvement in adequacy of transportation. With respect to NSR's trackage rights, today, the NSR intermodal trains face the height limitations of the Hoosac Tunnel, which prevent double-stack operations over PAS since clearance on PAS does not permit the movement of double stack trains through the tunnel. Before reaching the Hoosac Tunnel, a double-stack train approaching from the west must be stopped and fileted, meaning that the top row of containers and trailers must be removed from the intermodal rail cars and loaded onto other intermodal rail cars, resulting in a longer train. Accordingly, existing operations require more intermodal rail cars, and longer transit times as the train must stop while the fileting occurs. In reverse, on a westbound move, the train from the east is single stacked. Once the train passes west beyond the Hoosac Tunnel, it is stopped and toupeed, meaning that the single stack containers and trailers are removed from the single stack and double stacked.

Diverting up to one pair of intermodal and automotive trains operated by NSR per day from the PAS line to the double-stack capable CSXT route between Voorheesville, NY and

Worcester, MA, and continuing over Providence and Worcester Railroad Company between Worcester and Barbers Station, Boston & Maine between Barbers Station and Harvard, MA, and then over PAS between Harvard and Ayer, allows NSR to (1) avoid fileting and toupeeing the trains, (2) handle shorter trains, and (3) operate a more efficient and timely train. The effect of diverting these trains to the CSXT route will potentially free up capacity on the PAS mainline.

In addition, the Settlement Agreement with NSR involves the addition of capacity on PAS lines near Ayer and the establishment of operating protocols that will improve the efficiency of operations on PAS and ensure the unimpeded movement of traffic from CSXT's lines into New England.

(v) The effect of the proposed transaction upon applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

As noted above, Springfield Terminal currently operates (1) the PAR System, as the lessee of all rail lines owned by the PAR Railroads, and (2) PAS, as a contract operator. Springfield Terminal currently has one workforce. As a result of the Proposed Transaction, Springfield Terminal will continue to operate the PAR System as it had before the Proposed Transaction, until such time as Springfield Terminal is merged into CSXT, at which time CSXT will operate the PAR System. CSXT does not anticipate adverse effects on Springfield Terminal employees as a result of its control of Systems and Springfield Terminal.

However, in advance of the consummation of the Related Transactions, Springfield Terminal and B&E will enter into implementing agreements with employee representatives to allocate the current Springfield Terminal workforce between Springfield Terminal as operator of the PAR System and B&E as operator of PAS. Following these steps, B&E will start operating PAS, replacing Springfield Terminal.

The Applicants do not anticipate any adverse impacts on Springfield Terminal craft employees allocated to the PAR System. However, the Applicants understand that B&E does not expect to need the same number of employees who currently operate PAS, and therefore the Applicants expect that some of the Springfield Terminal craft positions allocated to PAS will be eliminated, as explained in more detail in the Labor Impact Statement attached as Appendix 1, and those Springfield Terminal employees will be able to assert their rights under *New York Dock* and any implementing agreements.

The standard labor protective conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) apply to the Proposed Transaction because it involves a class I carrier (CSXT). *See* 49 U.S.C. § 11326(a). As explained in the related Petition for Exemption by B&E, because that Related Transaction in which B&E will replace Springfield Terminal involves two class II carriers (PAS and Springfield Terminal) and one class III carrier (B&E), Section 11326(a) and *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) also apply to the replacement of PAS operators by B&E.

In addition, imposition of *New York Dock* conditions on the Proposed Transaction and the related B&E Petition for Exemption addresses the concerns of rail labor when PAS was created about the possible impact on employees in the event that Springfield Terminal was replaced in the future with another operator. *See PAS Formation Decision*, slip op. at 15-17. Rail labor specifically requested that the Board impose *New York Dock* conditions on any future change in PAS operator. Now that the Proposed Transaction and the related B&E transaction provide for a change in PAS operator, and fall within Section 11323(a), the parties request that *New York Dock* conditions be applied, as mandated by statute, to the change of the PAS operator, as sought by labor when PAS was created.

The conditions in *Norfolk & Western* as modified by *Mendocino Coast* are the appropriate conditions for the Related Transaction of the grant of trackage rights to NSR. *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

(vi) *The effect of inclusion (or lack of inclusion) in the proposed transaction of other railroads in the territory, under 49 U.S.C. 11324.*

Inclusion is not available as a form of relief in a minor transaction.

In addition, in light of the voluntarily negotiated agreements between CSXT, NSR, and B&E reflected in the Related Transactions, there is no basis for including another railroad in the Proposed Transaction. Whatever potentially adverse competitive effects might have arisen as a result of the Proposed Transaction have been addressed through the Related Transactions. Board approval for the Related Transactions is being sought in sub-dockets to this proceeding.

(3) *Any other supporting or descriptive statements applicants deem material.*

The Board’s review of “minor” transactions focuses primarily on the anticipated competitive impacts of the proposed transaction. *See NS/D&H*, slip op. at 14; *Canadian Nat’l Ry.—Control—EJ&E W. Co.*, FD 35087, Decision No. 16, slip op. at 13 (STB served Dec. 24, 2008), *pet. for review denied sub nom. Village of Barrington v. STB*, 636 F.3d 650 (D.C. Cir. 2011); *Canadian Pac. Ltd.—Control—Davenport, R.I. & N.W. Ry.*, FD 32579, 1995 WL 55450, at *5 (ICC served Feb. 10, 1995). The Board must approve such a transaction unless it finds that it will cause “adverse competitive impacts that are both ‘likely’ and ‘substantial,’” and that those impacts outweigh the public benefits of the transaction and cannot be mitigated through Board-imposed conditions.⁶ *NS/D&H*, slip op. at 14. Examples of adverse competitive impacts “would

⁶ Public interest factors are considered only where significant anticompetitive effects are found. *Canadian Nat’l Ry.—Control—EJ&E W. Co.*, FD 35087, Decision No. 16, slip op. at 13 (STB served Dec. 24, 2008).

be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two.” *Blackstone Cap. Partners—Control Exemption—CNW Corp. et al.*, 5 I.C.C.2d 1015, 1019 (1989). The Proposed Transaction would have no such anticompetitive effects. To the contrary, it would serve the public interest, as discussed above in Section 1180.6(a)(1)(iii).

This Application is supported by three attached Verified Statements in Exhibit 22: (1) Verified Statement of Mr. Sean Pelkey addressing the public benefits that can be expected to result from the Proposed Transaction and the Related Transactions; (2) Verified Statement of Dr. David Reishus, addressing competition issues; and (3) Verified Statement of Dr. William Huneke, addressing the enhanced competition that will result from the Related Transactions.

Verified Statement of Mr. Sean Pelkey: The Application is supported by the Verified Statement of Mr. Pelkey, CSXT’s Vice President, Finance & Treasury, who describes the public benefits that will result from the Proposed Transaction. Mr. Pelkey’s Verified Statement is incorporated by reference herein. Mr. Pelkey explains that the Proposed Transaction will allow CSXT to expand its customer-centered operations into New England, giving CSXT’s existing customers more direct and efficient access to New England markets and the PAR System’s existing customers better rail service. The Proposed Transaction will create reliable single-line access to the rest of CSXT’s rail network, allowing the rail network in New England to become integrated into CSXT’s broader U.S. rail network and providing expanded market access and increased opportunities to divert traffic from truck to rail and remove that traffic from congested highways.

Mr. Pelkey also explains that the Related Transactions will strengthen PAS as an independent route for access to New England rail customers for all carriers that connect to PAS.

Included as Exhibits to Mr. Pelkey’s Verified Statement are copies of the NSR Settlement Agreement between NSR and CSXT, including a related agreement regarding operations in Ayer, and the Term Sheet Agreement among CSXT, NSR, and GWI. Mr. Pelkey explains how these agreements will enhance competition and improve rail service. Mr. Pelkey further explains that GWI’s operating experience and familiarity with the New England rail market will improve PAS operations and rail service. In addition, the NSR trackage rights will allow NSR to move double-stack intermodal traffic into the Boston area, which it is unable to do today on PAS.

Mr. Pelkey further describes the commitments that CSXT is making to ensure that no adverse competitive effects will result from the Proposed Transaction and the replacement of Springfield Terminal with B&E as PAS operator.

Verified Statement of Dr. Reishus: Dr. Reishus explains that the Proposed Transaction should be approved because, when considered together with the Related Transactions, the Proposed Transaction will not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. Dr. Reishus’s Verified Statement is incorporated by reference herein.

The Board’s review of the Proposed Transaction focuses on competitive impacts. Under the governing standard, because the Proposed Transaction does not involve the merger or control of at least two Class I rail carriers, the Board “shall approve” the transaction unless it finds both that:

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d). Moreover, the Board has stated that “our primary focus is on whether there would be adverse competitive impacts that are both likely and substantial.” *CSX Transp., Inc.—Acquisition of Operating Easement—Grand Trunk W. R.R. Co.*, FD 35522, slip op. at 5 (STB served Feb. 8, 2013); and *Can. Nat’l Ry. Co. and Grand Trunk Corp.—Control—EJ&E W. Co.*, FD 35087, Decision No. 16, slip op. at 13 (STB served Dec. 24, 2008).

Dr. Reishus explains that adverse effects on competition from the Proposed Transaction and the Related Transactions are neither likely nor substantial. Dr. Reishus explains that CSXT’s acquisition of the PAR System is end-to-end when considered together with the Related Transactions. Transactions like this one that involve vertical integration pose little or no risk for competitive harm and, indeed, provide the opportunity for pro-competitive service improvements. Dr. Reishus further explains that CSXT has made commitments to ensure that no shipper will lose access to multiple rail carriers and that CSXT will maintain existing gateways on commercially reasonable terms and preserve rate regulation remedies for shippers seeking access to other rail carriers.

As to PAS and the Related Transactions, Dr. Reishus makes the following five points: (1) the agreements that CSXT has reached with NSR and GWI will prevent any potential adverse impact on competition from CSXT’s part ownership of PAS and indeed will substantially enhance competition; (2) the replacement of Springfield Terminal with B&E as the operator of PAS will ensure that PAS operations and rates will be competitively neutral and that rail carriers connecting to PAS will have unimpeded access to New England rail customers; (3) any competitive concerns that would arise out of the limited overlap between the current operations of PAS and other GWI-owned rail carriers on PAS’s north-south route will be adequately mitigated by commitments that have been made by PAS to the relevant shippers and shortline

rail carrier; (4) a substantial enhancement of competition will result from the grant of trackage rights to NSR to reach Ayer, MA; and (5) the modification of PAS agreements will ensure the unfettered flow of traffic on the combined CSXT-PAR System lines through Ayer, MA.

Verified Statement of Dr. William Huneke: Dr. Huneke's Verified Statement focuses on the agreements reached by CSXT with NSR and GWI that address potential competitive concerns associated with the Proposed Transaction and PAS. As Dr. Huneke explains, these agreements not only ensure there will be no anticompetitive effects from the Proposed Transaction, they substantially enhance competition in the region. Dr. Huneke's analysis concludes that (1) PAS as operated by B&E will continue to be an independent provider of rail service into and out of New England, ensuring access by multiple carriers to the New England market; (2) NSR will be a stronger competitor as a result of its new trackage rights over CSXT for intermodal and automotive traffic to reach Ayer, MA; and (3) CSXT will have an efficient and unencumbered route through Ayer, MA for the movement of traffic into and out of New England. While the Board's rules do not require a showing of enhanced competition, the agreement reached by CSXT accomplish this result.

Applicants believe that the information furnished in this Application adequately supports the Board's approval of this minor transaction under applicable statutory criteria and Board precedent. Applicants will furnish the Board with any information concerning this Proposed Transaction that it may require and will participate fully in any proceedings on the Proposed Transaction which the Board deems appropriate.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

See Appendixes 2A and 2B.

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

CSXT owns and operates about 19,500 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Québec.

The PAR System consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage rights route miles, in Massachusetts, Maine, New Hampshire, and Vermont. The PAS network consists of approximately 425 route miles of rail lines, including approximately 281.38 owned (including perpetual freight easement) route miles and approximately 143.62 trackage rights route miles, in Connecticut, Massachusetts, New Hampshire, New York, and Vermont.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

See Exhibit 1 attached hereto.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

CSXC is acquiring the stock of Systems. The terms of purchase are set forth in Article 1.1, Definitions of the Merger Agreement in the definitions of the Base Merger Consideration, Merger Shares, the Stock Adjustment, the Stock Price; Article 2.6 Effect on Capital Stock; and

Article 2.8 Final Cash Adjustment. The purchase price is \${{[REDACTED]}}. {{[REDACTED]}}

[REDACTED]

[REDACTED]}}

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction. In addition, parties to exempt trackage rights agreements and renewal of agreements described at §1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

A copy of the executed Merger Agreement is submitted in Exhibit 2 attached hereto. A copy of the unredacted Merger Agreement has been submitted under seal.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

The companies surviving the Proposed Transaction will be CSX Corporation, a non-carrier, and CSX Transportation, Inc., a rail carrier subject to the jurisdiction of the Board. Both are Virginia corporations. Upon acquisition of the stock of Systems, CSXC will contribute the shares of Systems to CSXT, along with the subsidiaries of Systems.

As explained above, CSXT intends to exercise the requested merger authority at a time in the future yet to be determined, based on considerations relating to the execution of labor implementing agreements and tax issues. V&M will not be merged because Boston & Maine does not own 100% of the outstanding stock.

All the stock of CSXT is owned by CSXC. No stock of CSXT will be issued. CSXC will issue {{[REDACTED]}}.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

(v) State whether the property involved in the proposed transaction includes all the property of the applicant carriers and, if not, describe what property is included in the proposed transaction.

The Proposed Transaction involves all the property of CSXT and Systems.

(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

CSXT owns and operates about 19,500 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Québec. The CSXT network includes a rail line between the Boston, MA region and Rotterdam Junction, NY, via Selkirk, NY. The PAS Patriot Corridor also connects the Boston region (via Ayer, MA) and Rotterdam Junction, NY via East Deerfield, MA. CSXT primarily interchanges traffic with the PAR System (Springfield Terminal) and PAS at Rotterdam Junction, NY and Barbers Station, MA.

The PAR System consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage rights route miles, in Massachusetts, Maine, New Hampshire, and Vermont. Various PAR Railroads own the PAR System's rail lines, and Springfield Terminal, another PAR subsidiary, leases the lines from the PAR Railroads and operates the PAR System.

Boston & Maine, a subsidiary of PAR, owns approximately 144.18 route miles of main line track, which includes: 1) a rail line extending from the Massachusetts state line to Rigby,

ME, a distance of approximately 74.82 route miles; 2) a rail line extending from Barbers Station, MA to Harvard, MA, a distance of approximately 22.87 route miles; 3) a rail line extending from the Massachusetts state line to Concord, NH, a distance of approximately 39.42 route miles; and 4) a rail line extending from Bleachery, MA to Lowell Junction, MA, a distance of approximately 7.07 route miles. Boston & Maine owns perpetual freight easements over various segments of track owned by the Massachusetts Bay Transportation Authority (“MBTA”) in eastern Massachusetts, totaling 149.93 route miles. Boston & Maine also owns approximately 36.94 route miles of branch line track.

Additionally, Boston & Maine leases approximately 26.64 route miles of main line track, which includes: 1) a rail line extending from CPF 312 to CPF NC, a distance of approximately 9.63 route miles, owned by PAR subsidiary Stony Brook; 2) a rail line extending from Bleachery, MA to CPF NC, a distance of approximately 3.84 route miles, owned by the Massachusetts Department of Transportation (“MassDOT”); 3) a rail line extending from CPF NC to the Massachusetts state line, a distance of approximately 6.20 route miles, owned by MassDOT; and 4) two rail line segments in Concord, NH and White River Junction, VT, totaling a distance of approximately 6.97 route miles, owned by PAR subsidiary Northern.

Maine Central, a subsidiary of PAR, owns approximately 191.64 route miles of main line track, which includes: 1) a rail line extending from the Portland Terminal limit to Waterville, ME, a distance of approximately 78.97 route miles; 2) a rail line extending from Waterville, ME to Bangor, ME, a distance of approximately 54.60 route miles; and 3) a rail line extending from Bangor, ME to Mattawamkeag, ME, a distance of approximately 58.06 route miles. Maine Central also owns approximately 155.26 route miles of branch line track.

Portland Terminal, a subsidiary of PAR, owns approximately 13.13 route miles of main line track, which includes: 1) approximately 5.45 route miles between Yard 8 East and the Portland/Falmouth line; 2) approximately 3.08 route miles between Yard 8 East and the So. Portland/Scarborough line; and 3) approximately 4.59 route miles between Mountain Junction and the Woodyard Switch. Portland Terminal also owns approximately 6.82 route miles of branch line track.

The PAR System/Springfield Terminal interchanges traffic with: 1) Canadian National Railway Company (“CN”) at Danville Jct., ME;⁷ 2) CN at Saint John, NB;⁸ 3) Canadian Pacific Railway Company (“CP”) at Brunswick, ME;⁹ 4) CP at Northern Maine Junction, ME; 5) CSXT at Barbers Station, MA (Worcester); 6) CSXT at Boston, MA;¹⁰ 7) NSR at Ayer, MA;¹¹ 8) Belfast and Moosehead Lake Railroad at Burnham Jct., ME;¹² 9) Maine Northern Railroad at Mattawamkeag, ME;¹³ 10) Maine Northern Railroad at Northern Maine Jct., ME;¹⁴ 11) New Brunswick Southern Railway at Mattawamkeag, ME;¹⁵ 12) New Brunswick Southern Railway at Northern Maine Jct., ME;¹⁶ 13) New Hampshire Northcoast at Dover, NH; 14) PAS at Ayer, MA; 15) PAS at North Charlestown, NH;¹⁷ 16) P&W at Worcester, MA;¹⁸ 17) St. Lawrence &

⁷ CN accesses Danville Junction via a haulage arrangement with the St. Lawrence & Atlantic Railroad.

⁸ Springfield Terminal accesses Saint John via a haulage agreement with New Brunswick Southern Railway and Eastern Maine Railway.

⁹ The Brunswick interchange connects with CP’s Brunswick Branch.

¹⁰ This interchange is not regularly used.

¹¹ This interchange is used only for haulage traffic moving to Walnut Hill, MA / Winchester, MA and for joint Springfield Terminal/NSR intermodal services.

¹² Belfast and Moosehead Lake Railroad has no revenue freight business at this time.

¹³ Maine Northern Railroad has access to Mattawamkeag via a haulage agreement with affiliate Eastern Maine Railway.

¹⁴ Maine Northern Railroad has access to Northern Maine Jct. via a haulage agreement with CP.

¹⁵ New Brunswick Southern Railway has access to Mattawamkeag via a haulage agreement with affiliate Eastern Maine Railway.

¹⁶ Maine Northern Railroad has access to Northern Maine Jct. via haulage agreements with CP and Eastern Maine Railway.

¹⁷ This interchange connects to a Springfield Terminal line at Charlestown, NH that is not currently operating.

¹⁸ Physical interchange occurs at Barbers Station, MA.

Atlantic Railroad at Danville Jct., ME; 18) Turners Island Railroad at Portland, ME; 19) New England Southern Railroad (Vermont Rail System) at Concord, NH; and 20) Milford-Bennington Railroad at Wilton, NH.

The PAS network consists of approximately 425 route miles of rail lines, including approximately 281.38 route miles owned (including perpetual freight easement) and approximately 143.62 trackage rights route miles, in Connecticut, Massachusetts, New Hampshire, New York, and Vermont. Springfield Terminal operates PAS on a contract basis. *See PAS Formation Decision*, slip op. at 15-17.

The PAS lines include two main line corridors, referred to as the Patriot Corridor and the Knowledge Corridor. The PAS Patriot Corridor extends between milepost 467.4 at Mechanicville, NY and milepost 311.97 near Willows, MA, a distance of approximately 151.4 miles, inclusive of freight easement rights over MBTA between milepost 329.55 at Fitchburg, MA and milepost 313.77 at Willows, MA, a distance of approximately 15.8 miles. PAS also has trackage rights at the western end of the Patriot Corridor over the CP Freight Subdivision between milepost 467.6 (CPF 468) at Mechanicville, NY and milepost 484.8 (CPF 485) at Mohawk Yard, NY, a distance of approximately 17.2 miles.

The PAS Knowledge Corridor extends between milepost 183.4 at White River Junction, VT and milepost 0.0 at New Haven, CT, a distance of approximately 183.4 miles, inclusive of the following: 1) trackage rights over New England Central Railroad (“NECR”) between milepost 183.4 at White River Junction, VT and milepost 110.6 at East Northfield, MA, a distance of approximately 72.8 miles; 2) freight easement rights over MassDOT-owned track assets between milepost 110.6 at East Northfield, MA and milepost 62.0 at Springfield, MA, a distance of approximately 49.7 miles; and 3) trackage rights over National Railroad Passenger

Corporation (“Amtrak”) between milepost 62.0 at Springfield, MA and milepost 0.0 at New Haven, CT, a distance of approximately 62 miles. *See Pan Am S. LLC—Acquisition and Operation Exemption—Lines of Boston & Maine Corp.*, FD 35147 (Sub-No. 1), Notice of Exemption at Exhibit 1 (filed June 27, 2008); *PAS Formation Decision*, slip op. at 2; *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35863 (STB served Dec. 24, 2014) (as modified, Mar. 27, 2015).

Additionally, PAS owns approximately 76.42 route miles of branch line track. The PAS lines include the following branch line track:

- 1) freight easement rights over MassDOT-owned track assets between milepost 0.0 at North Adams, MA and milepost 4.59 at Adams, MA, a distance of approximately 4.59 miles;
- 2) between milepost 0.0 at Gardner, MA and milepost 1.16 at Heywood, MA, a distance of approximately 1.16 miles;
- 3) between milepost 28.01 at Ayer, MA and milepost 25.7 at Harvard Station, MA, a distance of approximately 2.3 miles;
- 4) between milepost 0.0 at Berlin, CT and milepost 8.4 at Derby, CT, a distance of approximately 42.9 miles, inclusive of freight easement rights over Metro North Commuter Railroad from milepost 27 at Waterbury, CT to milepost 8.4 at Derby, CT, a distance of approximately 18.6 miles;
- 5) freight easement rights over MBTA between milepost 33.72 at Willows, MA and milepost 31.43 at Littleton, MA, a distance of approximately 2.3 miles;
- 6) freight easement rights over MBTA between milepost 0.0 at Ayer, MA and milepost 5.0 at Groton, MA, a distance of approximately 5 miles;

- 7) between milepost 12.16, Rotterdam Junction, NY and milepost 0.0 (CPF 477), near Burnt Hills, NY, a distance of approximately 12.16 miles;
- 8) the Southington Industrial Branch, which is approximately 4.5 miles between Plainville and Southington, CT; and
- 9) approximately 3.7 miles of trackage rights over CSXT between North Haven and Cedar Hill Yard, CT.

See Pan Am S. LLC—Acquisition and Operation Exemption—Lines of Boston & Maine Corp., FD 35147 (Sub-No. 1), Notice of Exemption at Exhibit 1 (filed June 27, 2008); *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35943, Motion to Dismiss at 7-8 (filed Aug. 14, 2015).

PAS interchanges with the following railroads: 1) CP at Mechanicville, NY;¹⁹ 2) CSXT at New Haven, CT;²⁰ 3) CSXT at Springfield, MA;²¹ 4) CSXT at Rotterdam Jct., NY; 5) NSR at Ayer, MA;²² 6) NSR at Mechanicville, NY;²³ 7) Battenkill Railroad at Eagle Bridge, NY; 8) Central New England Railroad at Hartford, CT;²⁴ 9) Connecticut Southern Railroad at Hartford, CT; 10) Housatonic Railroad at Derby, CT;²⁵ 11) NECR at Brattleboro, VT; 12) NECR at Millers Falls, MA;²⁶ 13) NECR at White River Jct., VT;²⁷ 14) Naugatuck Railroad at Waterbury, CT; 15) P&W at Gardner, MA; 16) Pioneer Valley Railroad at Holyoke, MA;

¹⁹ Physical interchange takes place at Mohawk Yard, Glenville, NY.

²⁰ This interchange is not currently in service. It is used for reciprocal switch delivery for North Haven/New Haven, CT.

²¹ This is not a regular interchange. It is used for occasional high-wide and detour movements.

²² This is not a regular interchange. It is used to exchange empty intermodal and automotive equipment when necessary.

²³ Interchange can physically take place at Mechanicville or Mohawk Yard in Glenville, NY.

²⁴ This interchange is as of January 1, 2021.

²⁵ This interchange is not currently used for revenue traffic.

²⁶ Interchange traffic with NECR is routed via Millers Falls, MA, but the physical interchange is performed at Brattleboro, VT for railroad convenience.

²⁷ This interchange is not currently used for revenue freight.

17) PAR System/Springfield Terminal at Ayer, MA; 18) PAR System/Springfield Terminal at North Charlestown, NH;²⁸ 19) Vermont Rail System at Hoosick Jct., NY; 20) Vermont Rail System at Bellows Falls, VT; and 21) Vermont Rail System at White River Jct., VT.

(vii) State whether any governmental financial assistance is involved in the proposed transaction and, if so, the form, amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the Proposed Transaction.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Section of Environmental Analysis for the proper format of the environmental report.

Pursuant to the Board's rules, 49 C.F.R. § 1105.6(b)(4), Environmental Assessments will normally be prepared in actions involving a merger or the acquisition of control when the proposed transaction will result in operational changes that would exceed the thresholds set out in 49 C.F.R. §§ 1105.7(e)(4) or (5). An Environmental Assessment is not required here because those thresholds will not be exceeded.

As a preliminary matter, the operating plan set out in Exhibit 15 demonstrates that the Proposed Transaction is not expected to result in any significant changes in rail operations, other than the diversion of up to one pair of NSR intermodal/automotive trains per day from the PAS route between upstate New York State and Boston to CSXT's line between roughly the same points. This diversion will allow NSR to avoid disassembling double-stack intermodal traffic in New York to pass over the PAS line that cannot accommodate double-stack trains. The diversion itself will have no adverse impact on the environment, and the ability to avoid the disassembly operation and related activity in a yard will be beneficial to the environment. In all other respects, the Proposed Transaction will be environmentally neutral since its objective is to

²⁸ This interchange connects to a Springfield Terminal line at Charlestown, NH that is not currently operating.

improve rail service that currently exists and expand market opportunities that will result from more reliable and consistent operations.

Over time, Applicants expect rail traffic to increase as rail users in New England identify new market opportunities and convert existing truck movements to rail. The degree to which rail traffic will increase cannot be estimated at this time, as it is expected to result more from organic growth. However, the likely increase in rail traffic will have positive environmental consequences as freight is moved from trucks to rail, with improvements in fuel consumption, air emissions and highway congestion.

Moreover, with improved rail operations, the existing rail network in New England will become more fluid, resulting in fewer idling locomotives, less delay at interchange locations, and fewer power swaps with connecting carriers. All these developments will have substantial benefits for the environment.

As to energy resources, the Board's regulations, 49 C.F.R. § 1105.7(e)(4) Energy, do not identify specific thresholds but instead ask for the following information:

(i) Describe the effect of the proposed action on transportation of energy resources.

There is not expected to be any change in operations on the existing CSXT network with respect to the handling of energy resources.

On the existing PAR System, CSXT intends to implement its first-in-class rail operations, resulting in increasingly consistent and reliable service. CSXT's trip-plan system, which focuses on individual cars rather than trains, will improve transit times and reliability. Changes in traditional switching and yard management practices will be made to achieve ambitious schedules, reduce the variability in rail operations and increase reliability. All these changes will benefit shippers of energy resources as well as other New England rail users. Accordingly, the Proposed Transaction will improve the transportation of energy resources over the rail lines to be

acquired. With respect to PAS operations, B&E will replace Springfield Terminal as PAS operator without substantially changing the operations that currently exist.

(ii) Describe the effect of the proposed action on recyclable commodities.

The effect of the Proposed Transaction on recyclable commodities will be the same as the effect on energy resources described above.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

CSXT expects the Proposed Transaction to result in an increase in overall energy efficiency on the PAR System as a result of the improvements in operations and efficiencies achieved through expansion of single-line service. CSXT does not expect the Proposed Transaction to otherwise have any effect on the current CSXT. As described in the Operating Plan, CSXT's operations require a plan for the efficient movement of individual cars. This reduces inefficient movement of cars and more efficient use of locomotives, with corresponding reductions in fuel use. With respect to PAS operations, B&E will replace Springfield Terminal as PAS operator without substantially changing the operations that currently exist.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than: (A) 1,000 rail carloads a year; or (B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

CSXT does not expect the Proposed Transaction to result in the diversion of any rail traffic to motor carriage. Indeed, CSXT expects the opposite to occur. CSXT expects that its best-in-class service model once implemented on the PAR System will allow it to divert traffic from trucks to rail. The efficiency and reliability of our rail service will allow more traffic to move from trucks to rail.

The thresholds established in 49 CFR 1105.7(e)(5) Air, are set forth below with the effects of the Proposed Transaction described following the italicized criteria.

(i) If the proposed action will result in either: (A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or (B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.

The Proposed Transaction will not result in an increase in rail traffic of 100 percent (measured in gross ton miles annually) or at least eight trains per day on CSXT or on any segment of rail line affected by the Proposed Transaction. Nor will there be an increase in rail yard activity of at least 100 percent (measured by carload activity). There will be no increase in truck traffic. CSXT expects that over time the volume of truck traffic will decline. CSXT does not plan to construct a new line or reinstitute service over a previously abandoned line.

(ii) If the proposed action affects a class I or nonattainment area under the Clean Air Act, and will result in either: (A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line, (B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or (C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The following counties in (1) Connecticut: Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham and (2) Massachusetts: Dukes are class I or nonattainment areas under the Clean Air Act.

The Proposed Transaction will not result in an increase in rail traffic of 50 percent (measured in gross ton miles annually) or at least three trains per day on CSXT or on any segment of rail line affected by the Proposed Transaction. Nor will there be an increase in rail

yard activity of at least 20 percent (measured by carload activity). There will be no increase in truck traffic. CSXT expects the volume of truck traffic to decline. CSXT does not plan to construct a new line or reinstitute service over a previously abandoned line.

(iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

The PAR Railroads and PAS do not transport ozone depleting materials.

Section 1180.8 Operational Data

(c) For minor transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:

See Exhibit 15.

(1) Traffic level density on lines proposed for joint operations.

As explained in Exhibit 15, CSXT does not expect there to be significant changes in patterns or types of rail service. The only expected change is that one NSR intermodal train pair per day will move from PAS onto CSXT's line between eastern New York and the Boston area.

(2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.

No adverse impacts on commuter or other passenger service are anticipated. No lines will be downgraded, eliminated, or operated on a consolidated basis. CSXT and the PAR Railroads will continue to abide by the contracts they have entered with the various commuter and passenger railroads that they share railroad lines with. B&E, the new PAS operator, will adhere to all commitments previously made by Springfield Terminal regarding operations involving PAS and commuter service on PAS lines. CSXT has been engaged in discussions with the commuter agencies MassDOT and MBTA and passenger railroad Amtrak to give those

authorities assurances that the Proposed Transaction and the Related Transactions will not reduce the service being provided to the commuters or passengers.

(3) Operating economies, which include, but are not limited to, estimated savings.

CSXT expects to achieve operating economies because of the Proposed Transaction. However, CSXT does not intend to make substantial changes in operations in the foreseeable future, and therefore it is not possible to make a realistic estimate of any cost savings.

(4) Any anticipated discontinuances or abandonments.

CSXT does not anticipate discontinuing service over or abandoning any of rail lines because of the Proposed Transaction. CSXT does expect Maine Central to commence and complete the abandonment of an out-of-service rail line located in central Maine, known as the Madison Branch. The line runs from Oakland, ME (milepost 0.4) to North Anson, ME (milepost 25.7). The line will be converted to a multi-use trail.

CONCLUSION

Applicants respectfully request that the Board accept the Application, determine that this is an Application for a minor transaction, and grant this Application subject to the conditions for the protection of employees in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) and the commitments made by Applicants in this Application.

Respectfully submitted,

/s/ Anthony J. LaRocca

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Railroad Company, Northern
Railroad, Portland Terminal
Company, Springfield Terminal
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Jacksonville, FL 32202
(904) 359-1229

*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Dated: February 25, 2021

VERIFICATION
(Section 1180.4(c)(2)(i))

I, Sean Pelkey, declare under penalty of perjury that the foregoing is true and correct, with respect to CSX Corporation and CSX Transportation, Inc. Further, I certify that I am qualified and authorized to make this verification and to file this Application.

/s/ Sean Pelkey

Sean Pelkey
Vice President, Finance & Treasury
CSX Corporation

February 25, 2021

VERIFICATION
(Section 1180.4(c)(2)(i))

I, Robert B. Culliford, declare under penalty of perjury that the foregoing is true and correct, with respect to Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company and Vermont & Massachusetts Railroad Company. Further, I certify that I am qualified and authorized to make this verification and to file this Application.

/s/ Robert B. Culliford

Robert B. Culliford
General Counsel
Pan Am Systems, Inc.

February 25, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Application in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company* to be served electronically or by first class mail, postage pre-paid, on the Secretary of the United States Department of Transportation; the Attorney General of the United States; the Federal Trade Commission; and the Governors, Public Service Commissions, and Departments of Transportation of the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, and the District of Columbia.

/s/ Sally Mordi

Sally Mordi
Attorney for CSX Corporation and
CSX Transportation, Inc.

February 25, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

APPENDIX 1

Impacts of the Proposed Transaction upon Carrier Employees

Impacts of the Proposed Transaction upon Carrier Employees

CSXT

Employees Affected by the Proposed Transaction

| Current Location | Job Classification/Craft | Jobs Transferred | Jobs Abolished | Jobs Created | Year |
|---|--------------------------|------------------|----------------|--------------|------|
| CSXT does not expect to establish or abolish craft positions on CSXT as a result of the Proposed Transaction. Some positions may be transferred but CSXT cannot determine any specifics at this time. | | 0 | 0 | 0 | 2022 |
| | | 0 | 0 | 0 | 2023 |
| | | 0 | 0 | 0 | 2024 |
| | | | | | |

PAR Railroads Operated by Springfield Terminal

Employees Affected by the Proposed Transaction

| Current Location | Job Classification/Craft | Jobs Transferred | Jobs Abolished | Jobs Created | Year |
|---|--------------------------|------------------|----------------|--------------|------|
| CSXT does not expect to establish or abolish craft positions on the PAR Railroads affecting Springfield Terminal employees as a result of the Proposed Transaction, but there will be impacts as a result of the related change in operator of PAS. Some positions may be transferred but CSXT cannot determine any specifics at this time. | | 0 | 0 | 0 | 2022 |
| | | 0 | 0 | 0 | 2023 |
| | | 0 | 0 | 0 | 2024 |
| | | | | | |

PAS Operated by Springfield Terminal

As a result of the transfer of the operating rights over PAS by PAS and Springfield Terminal to the Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, and the abolishment of positions on Springfield Terminal, employees of Springfield Terminal will be adversely affected. Springfield Terminal employees who do not obtain a position with the new operator or are unable to hold another position on Springfield Terminal and end up furloughed will be eligible for protective benefits under the *New York Dock* conditions. Each chart on the following page indicates the classification, location, jobs transferred, jobs abolished, and jobs created for employees expected to be adversely affected. All employees will be affected in the first year.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

APPENDIX 2A

Opinion of Counsel for CSX Corporation and CSX Transportation, Inc.

February 25, 2021

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*

Dear Ms. Brown:

As counsel for CSX Corporation and CSX Transportation, Inc. (collectively “CSX”), I am familiar with the Application for the control and merger of Pan Am Systems, Inc. and its subsidiaries by CSX and am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Very truly yours,

/s/ Steven C. Armbrust

Steven C. Armbrust
Assistant General Counsel
CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.

—CONTROL AND MERGER—

PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

APPENDIX 2B

**Opinion of Counsel for Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine
Corporation, Maine Central Railroad Company, Northern Railroad, Portland Terminal
Company, Springfield Terminal Railway Company, Stony Brook Railroad Company and
Vermont & Massachusetts Railroad Company**

February 25, 2021

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*

Dear Ms. Brown:

As counsel for Pan Am Systems, Inc. (“Systems”), Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company and Vermont & Massachusetts Railroad Company, I am familiar with the Application for the control and merger of Systems and its subsidiaries by CSX Corporation and CSX Transportation, Inc. and am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Very truly yours,

/s/ Robert B. Culliford

Robert B. Culliford
General Counsel
Pan Am Systems, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 1

Maps

Maps

System Map

Operations Service Map

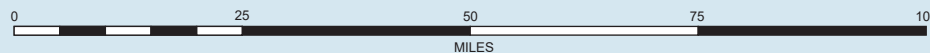
Interchange Locations Map

Amtrak Service Routes Map

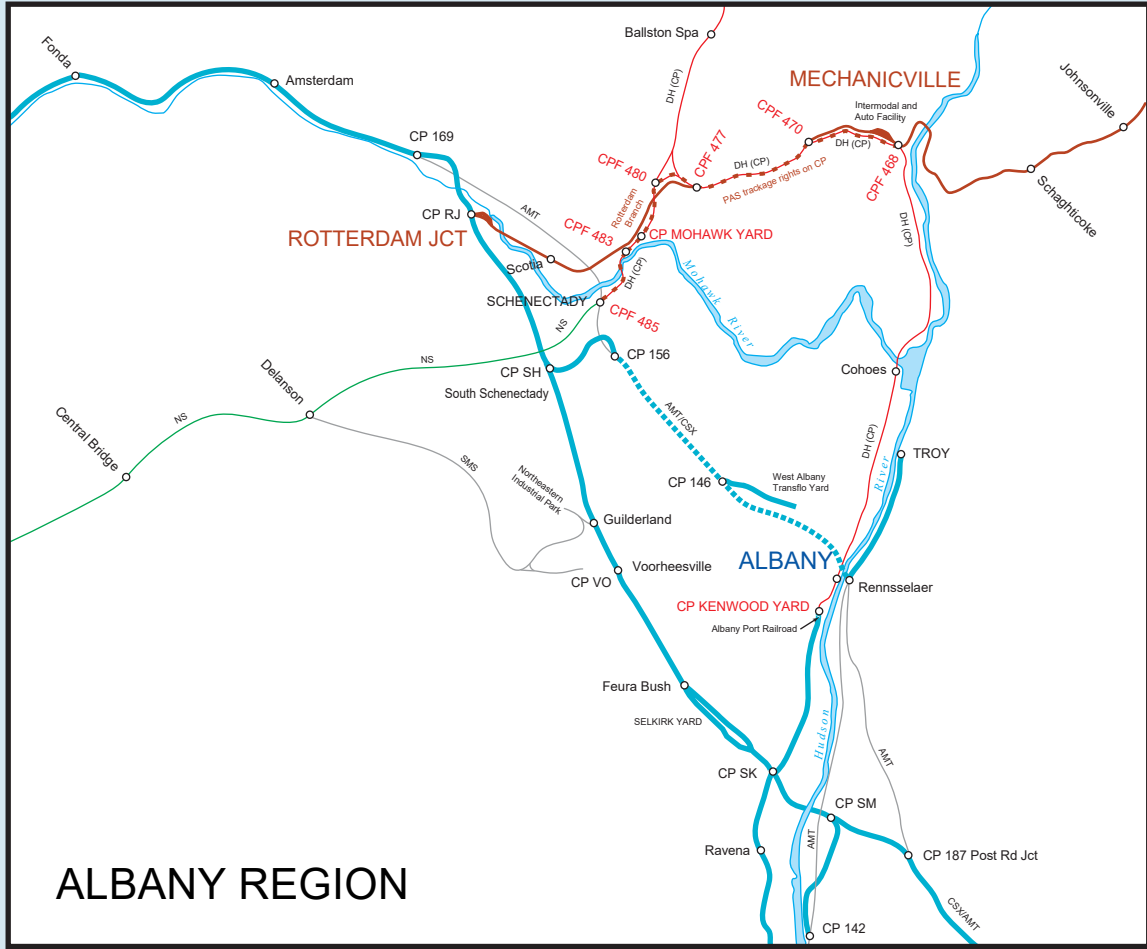
PAN AM RAILWAYS

BOSTON & MAINE CORP. • MAINE CENTRAL RAILROAD CO. • PAN AM SOUTHERN LLC • PORTLAND TERMINAL CO. • SPRINGFIELD TERMINAL RAILWAY CO.

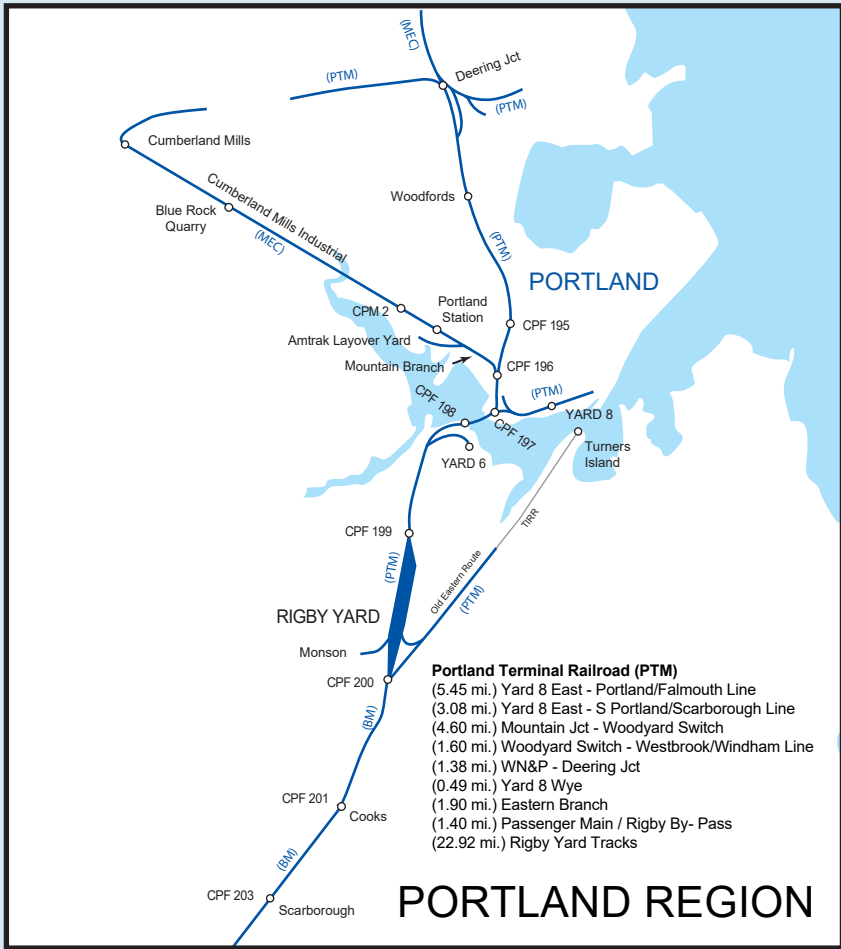
1700 IRON HORSE PARK • NORTH BILLERICA, MASSACHUSETTS 01862



Revised 2-22-2021 RRR



ALBANY REGION



PORTLAND REGION

Pan Am Southern (Operated by ST)

MAIN TRACKS

Patriot Corridor (139.7 mi) between Mechanicville, NY, and Ayer, MA including (15.8 mi) of freight easement rights over MBTA between Fitchburg (CPF 330) and Willows, MA (CP WL).

Freight Main Line (2.3 mi) between CP WL and CPF 312

Knowledge Corridor between White River Junction, VT, and New Haven, CT comprised of (72.3 mi) of trackage rights over the NECB between White River Junction, VT, and East Northfield, MA, (49.4 mi) of freight easement rights over the MassDOT owned Conn River Main Line between East Northfield and Springfield, MA and (55.0 mi) of trackage rights over Amtrak between Springfield, MA, and North Haven, CT.

BRANCHES

Rotterdam Branch (12.16 mi.) between CSX at CP RJ and the Canadian Pacific Railway at CPF 477.

Waterbury Branch (23.5 mi) between Berlin and Highland Jct., Waterbury, CT

OTHER TRACKS

Avon Industrial (1.46 mi.)
Berlin Industrial (2.6 mi.)
Canal Industrial (4.5 mi.)
Greenfield Industrial (7456 ft)
Heywood Industrial (0.77 mi)
Montague Industrial (7370 ft)
New Britain Industrial (4.5 mi.)
East Deerfield Industrial (1.2 mi)
Waterbury Industrial (0.5 mi.)
Watertown Industrial (0.3 mi.)

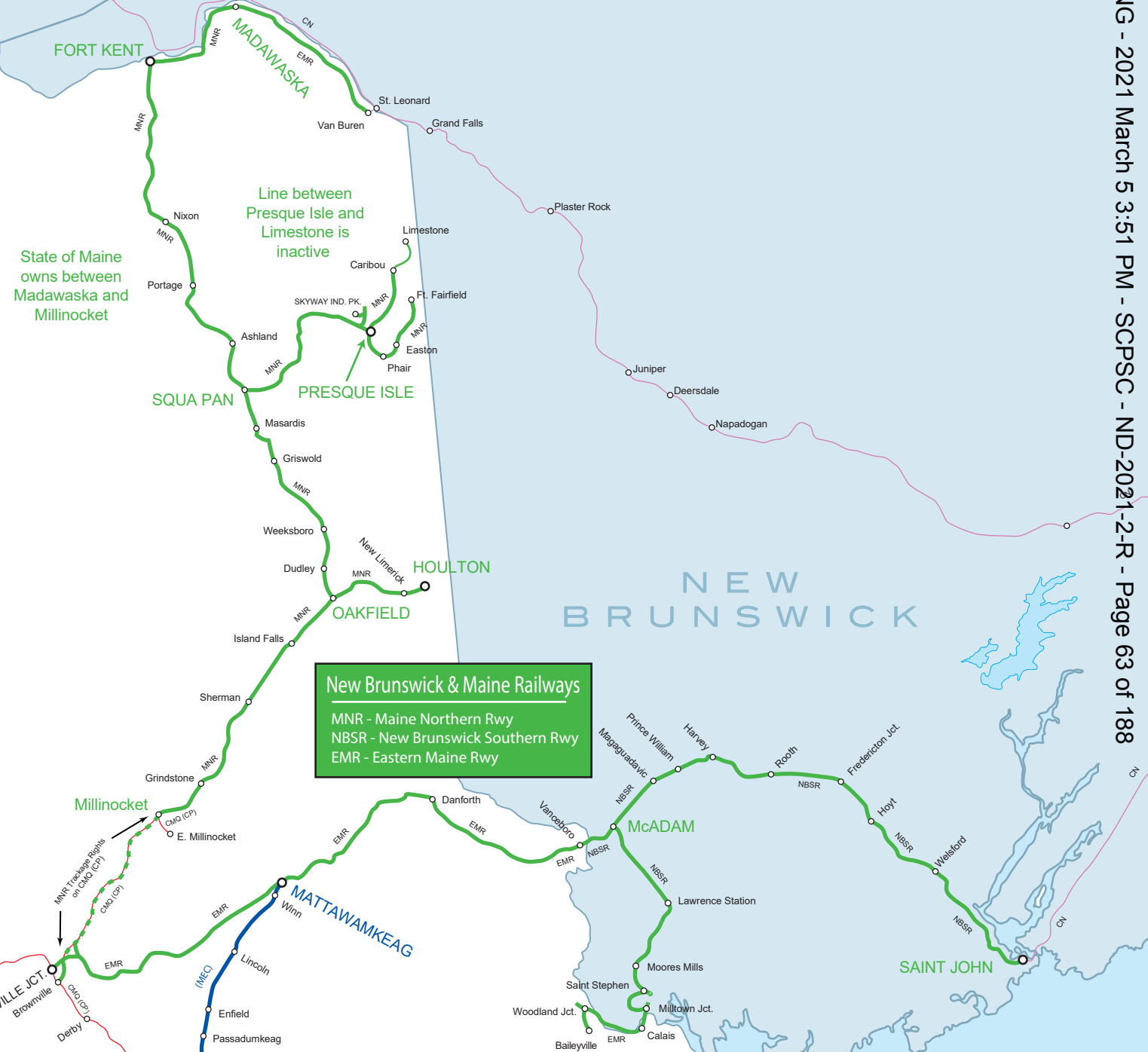
TRackage RIGHTS/FREIGHT EASEMENTS

Adams Industrial (4.6 mi) freight easement rights over the MassDOT owned line between N. Adams and Adams, MA shared with the Berkshire Scenic Railway passenger operation
CP Freight Sub (17.2 mi) trackage rights between Mohawk Yard and CPF 468 at Mechanicville, NY
CSXT (0.65 mi) trackage rights between North Haven and Cedar Hill Yard, CT
Green Mountain Railroad (VTR) (34 mi) trackage rights at Bellows Falls, VT
Greenville Industrial (5.0 mi) freight easement rights over the MassDOT owned line between Ayer and Groton, MA
MBTA Fitchburg Route (2.3 mi) freight easement rights between CP WL and Littleton, MA

Line Ownership

(BM) - Boston & Maine Corp.
(MassDOT) - Massachusetts Department of Transportation
(MEC) - Maine Central Railroad Co.
(NR) - Northern Railroad
(PTM) - Portland Terminal Co.
(SBRC) - Stony Brook Railroad Co.
(SPT) - Springfield Terminal Railroad Co.
(SBRC) Stony Brook Railroad Co.
(V&M) Vermont & Massachusetts Railroad Co.

SYSTEM MAP



New Brunswick & Maine Railways
MNR - Maine Northern Rwy
NBSR - New Brunswick Southern Rwy
EMR - Eastern Maine Rwy

Pan Am Railways (Operated by ST)

MAIN TRACKS

Freight Main Line (300.1 mi) between Mattawamkeag, ME and CPF 312 at Ayer, MA

Northern Main Line /Capitol Corridor (45.6 mi.) between Concord, NH and CPF NC at N. Chelmsford, MA

Worcester Main Line (22.9 mi) between Harvard, MA and Barbers Station, MA

BRANCHES

Brunswick Branch (14.8 mi) between CPL 17 at Brunswick, ME and CPF 185 at Royal Jct., ME

Bucksport Branch (17.9 mi) between MPB 17 at Bucksport, ME and Calais Jct. at Bangor, ME

Hillsboro Branch (16.4 mi) between Wilton and Nashua, NH

Hinckley Branch (10.2 mi) between Hindcley, and Fairfield, ME

Medford Branch (0.9 mi.) between the MBTA Western Route and Medford, MA

Mountain Branch (0.8 mi) between CPM 2 and CPF 196 in Portland, ME

Portsmouth Branch (10.6 mi) between Emery and MP P1 in Newfields, ME

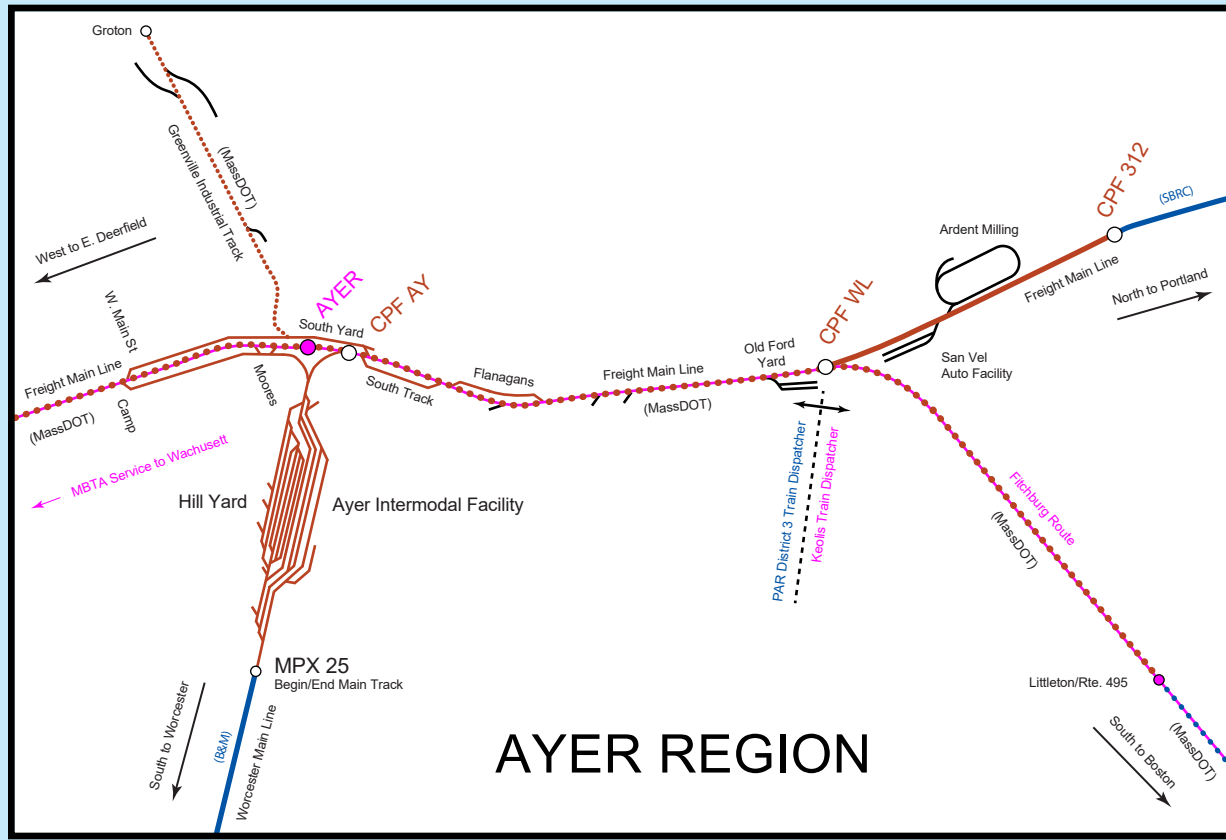
Rumford Branch (44.9 mi) between Rumford, ME and Leeds Jct., ME

OTHER TRACKS

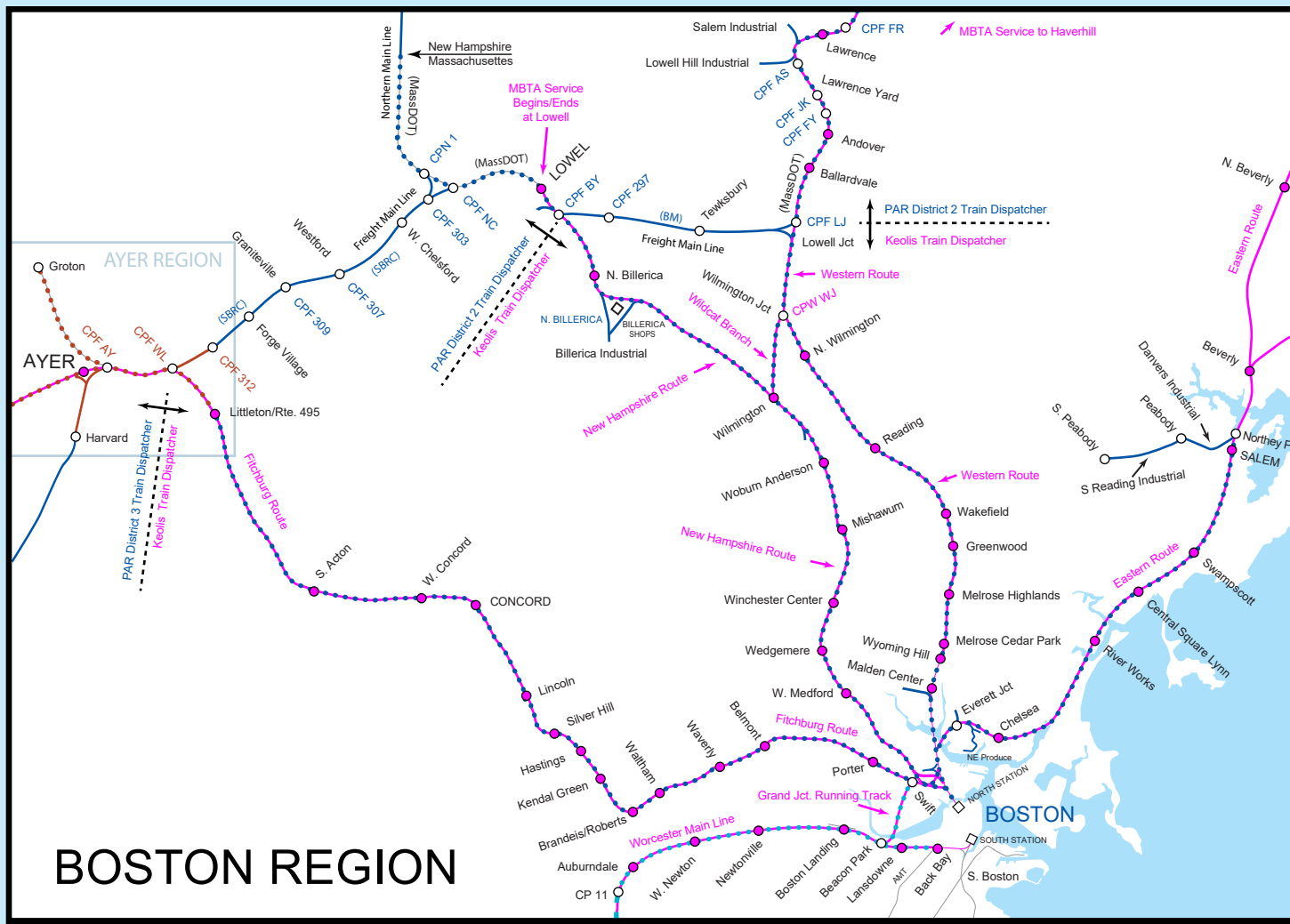
Billerica Industrial (2.7 mi.)
Danvers Industrial (1.9 mi.)
Concord Industrial (7.4 mi.)
Cumberland Mills Industrial (3.8 mi.)
East Augusta Industrial (18.9 mi.)
Lewiston Industrial (8.0 mi.)
Madison Industrial (25.3 mi.)
Newington Industrial (3.5 mi.)
South Reading Industrial (2.5 mi.)
Woburn Industrial (.07 mi.)
Boston Area Industrial Tracks (3.0 mi.)

TRackage RIGHTS/FREIGHT EASEMENTS

MBTA (361.9 mi.) Trackage throughout Eastern MA
Maine DOT (9.4 mi.) between Brunswick and Lison Falls, ME
Northern VT Railway (0.1 mi.) St. Johnsbury, VT



AYER REGION



BOSTON REGION

LEGEND

- Pan Am Railways (PAR)
- PAR Trackage Rights
- PAR Perpetual Freight Easement
- Pan Am Southern (PAS)
- PAS Trackage Rights
- PAS Perpetual Freight Easement
- CSX Transportation (CSXT)
- CSXT Trackage Rights
- CSXT Perpetual Freight Easement
- Massachusetts Bay Transportation Authority (MBTA)
- MBTA Passenger Operating Rights on PAS
- Genesee & Wyoming Inc. (GWI) Owned Railroads (as indicated)
- GWI Owned Railroads Trackage Rights
- GWI Owned Railroads Perpetual Freight Easement

PAN AM RAILWAYS

BOSTON & MAINE CORP. • MAINE CENTRAL RAILROAD CO. • PAN AM SOUTHERN LLC • PORTLAND TERMINAL CO. • SPRINGFIELD TERMINAL RAILWAY CO.

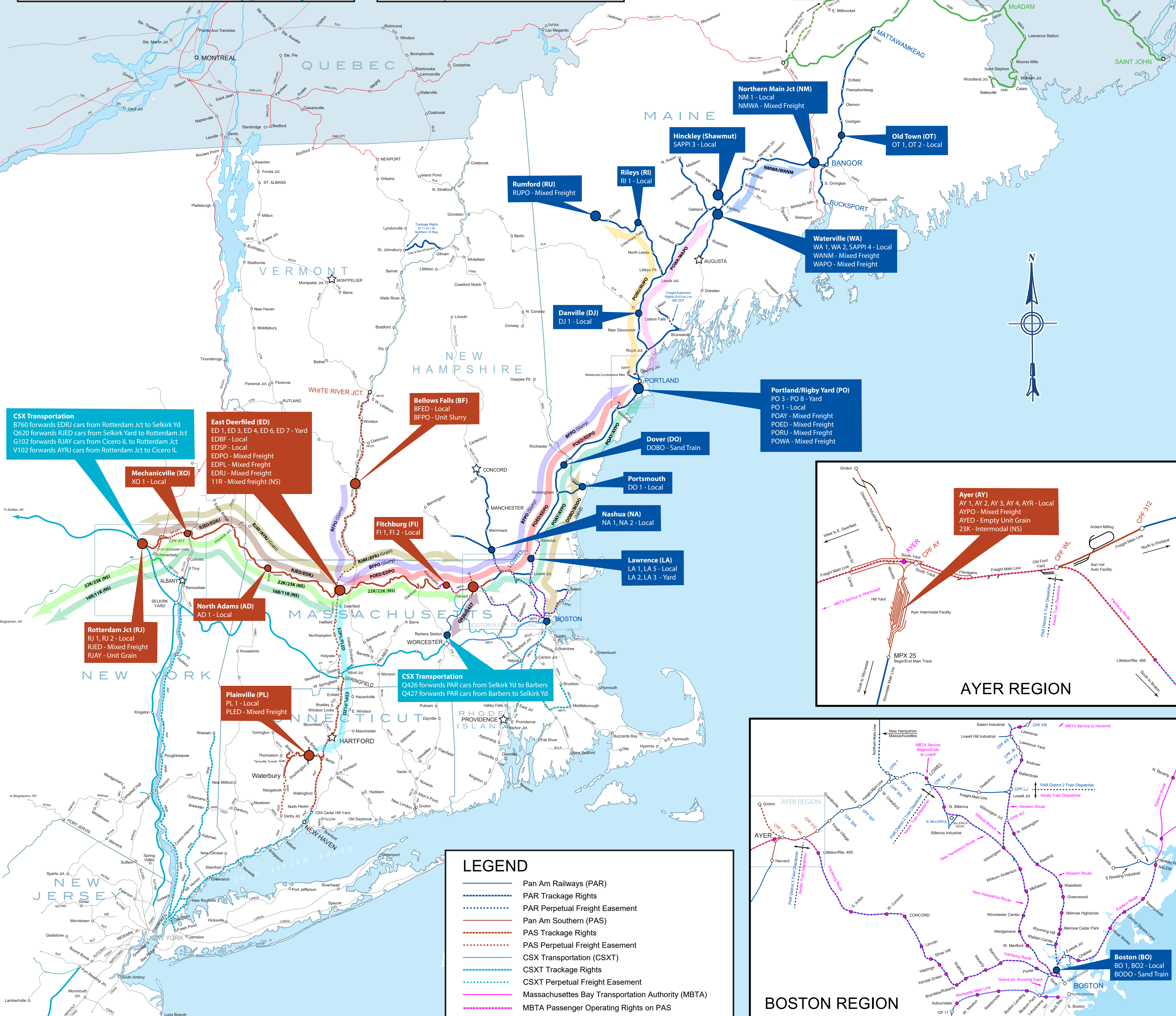
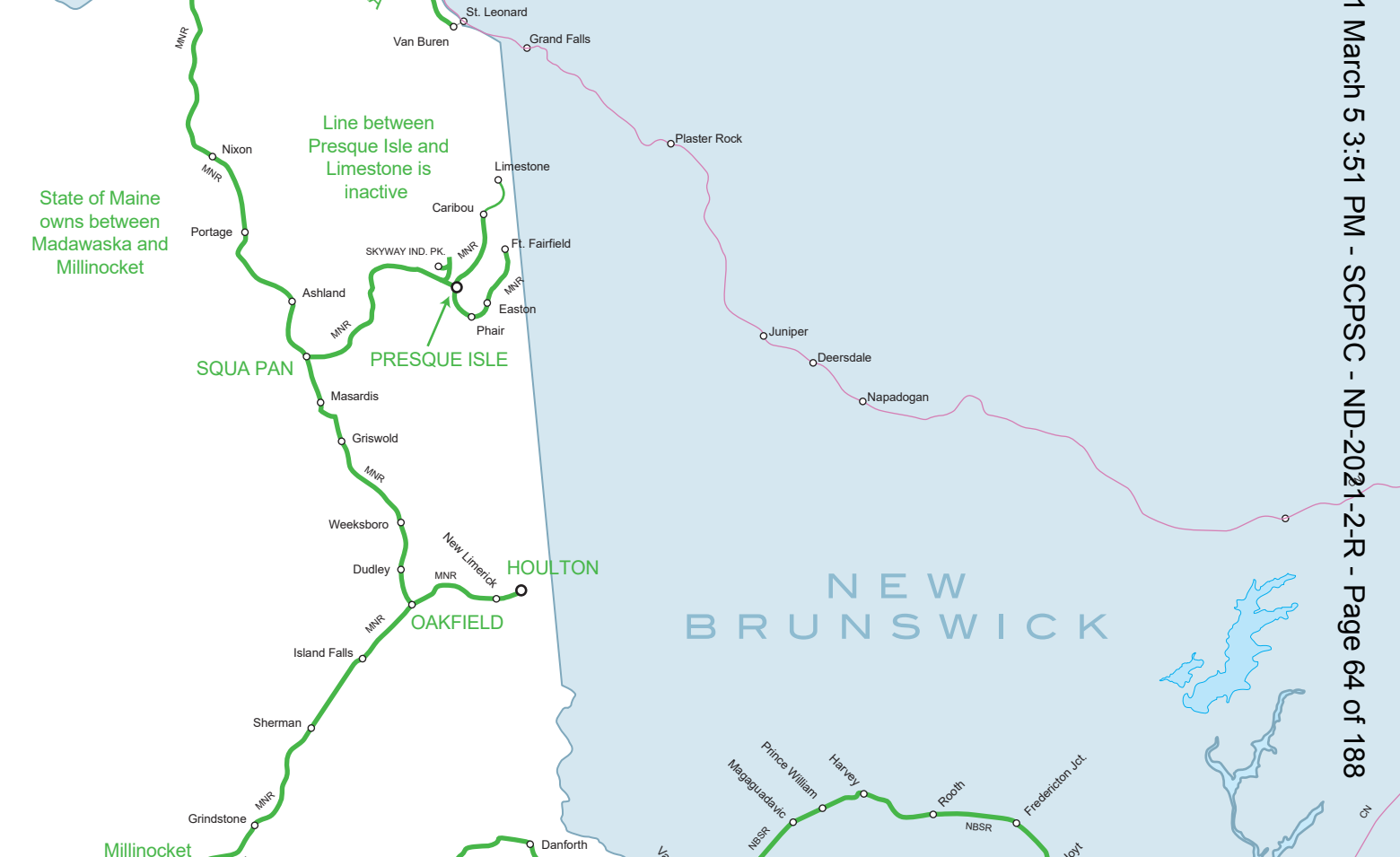
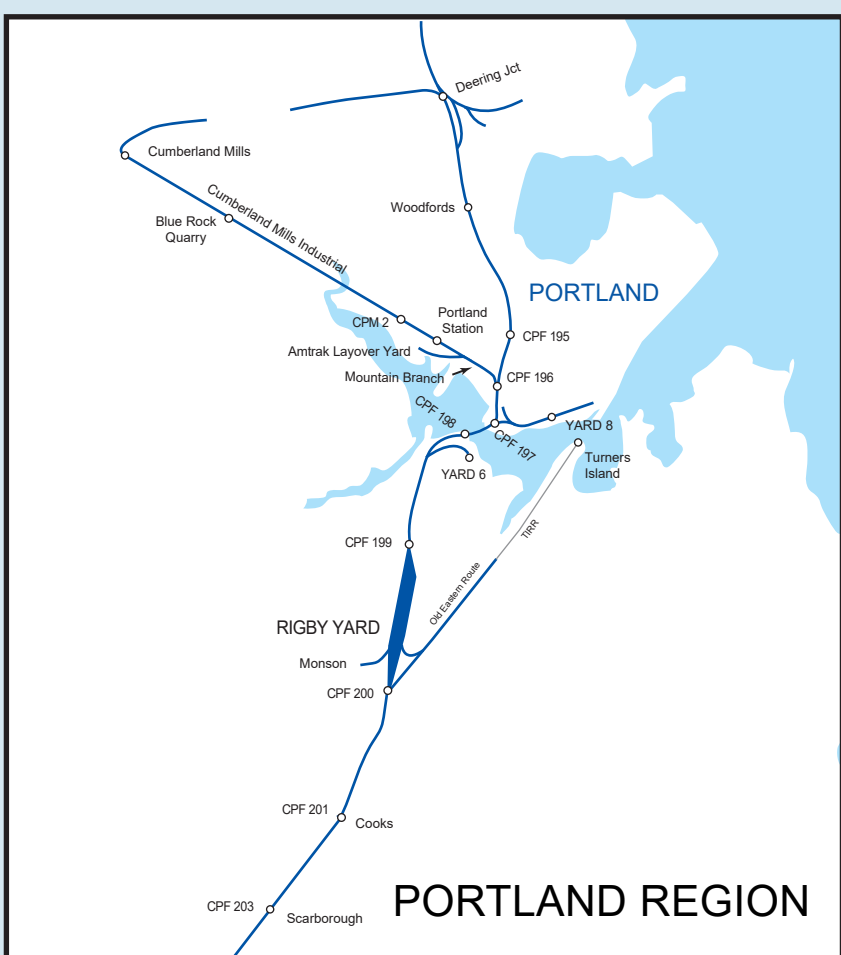
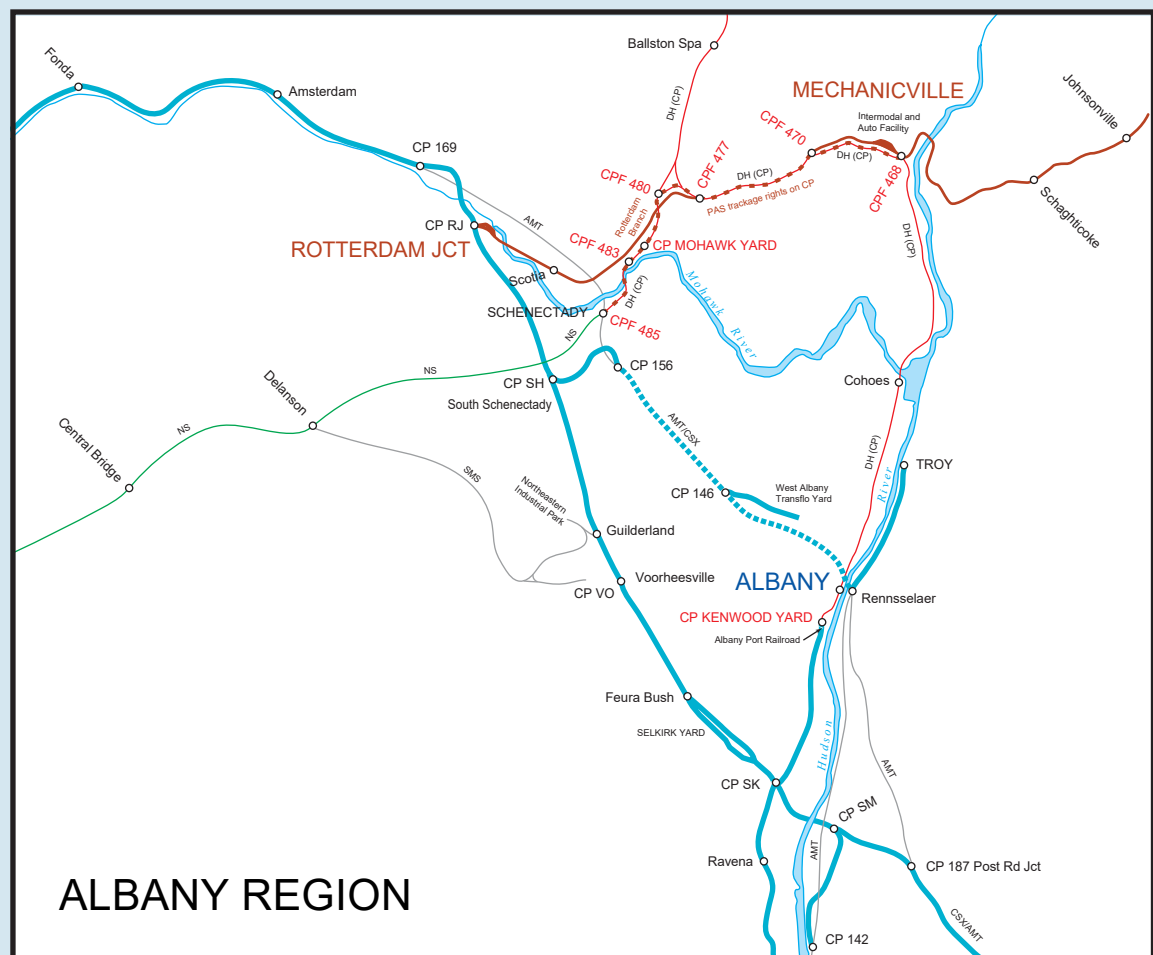
1700 IRON HORSE PARK • NORTH BILLERICA, MASSACHUSETTS 01862



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OPERATIONS SERVICE MAP



CSX Transportation
B760 forwards EDRJ cars from Rotterdam Jct to Selkirk Yd
Q620 forwards RJED cars from Selkirk Yd to Rotterdam Jct
G102 forwards RJAY cars from Cicero IL to Rotterdam Jct
V102 forwards AYRJ cars from Rotterdam Jct to Cicero IL

East Deerfield (ED)
ED 1, ED 3, ED 4, ED 6, ED 7 - Yard
EDBF - Local
EDSP - Local
EDPO - Mixed Freight
EDPL - Mixed Freight
EDRJ - Mixed Freight
11R - Mixed freight (NS)

Mechanicville (XO)
XO 1 - Local

Rotterdam Jct (RJ)
RJ 1, RJ 2 - Local
RJED - Mixed Freight
RJAY - Unit Grain

North Adams (AD)
AD 1 - Local

Plainville (PL)
PL 1 - Local
PLED - Mixed Freight

Fitchburg (FI)
FI 1, FI 2 - Local

Bellows Falls (BF)
BFED - Local
BFPO - Unit Slurry

Danville (DJ)
DJ 1 - Local

Rumford (RU)
RUPO - Mixed Freight

Rileys (RI)
RI 1 - Local

Hinckley (Shawmut)
SAPPI 3 - Local

Northern Main Jct (NM)
NM 1 - Local
NMWA - Mixed Freight

Old Town (OT)
OT 1, OT 2 - Local

Waterville (WA)
WA 1, WA 2, SAPPI 4 - Local
WANM - Mixed Freight
WAPO - Mixed Freight

Portland/Rigby Yard (PO)
PO 3 - PO 8 - Yard
PO 1 - Local
POAY - Mixed Freight
PORU - Mixed Freight
POWA - Mixed Freight

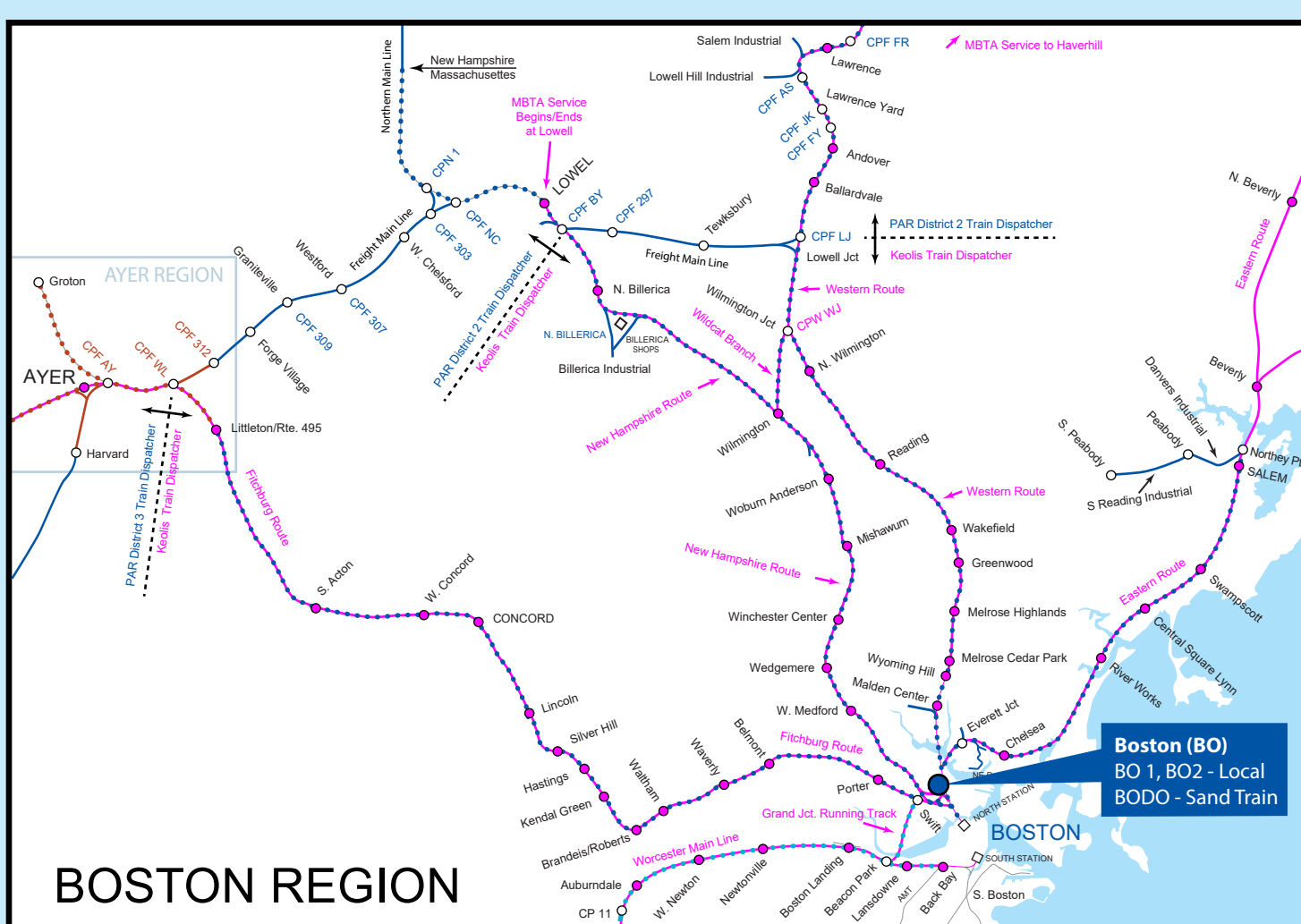
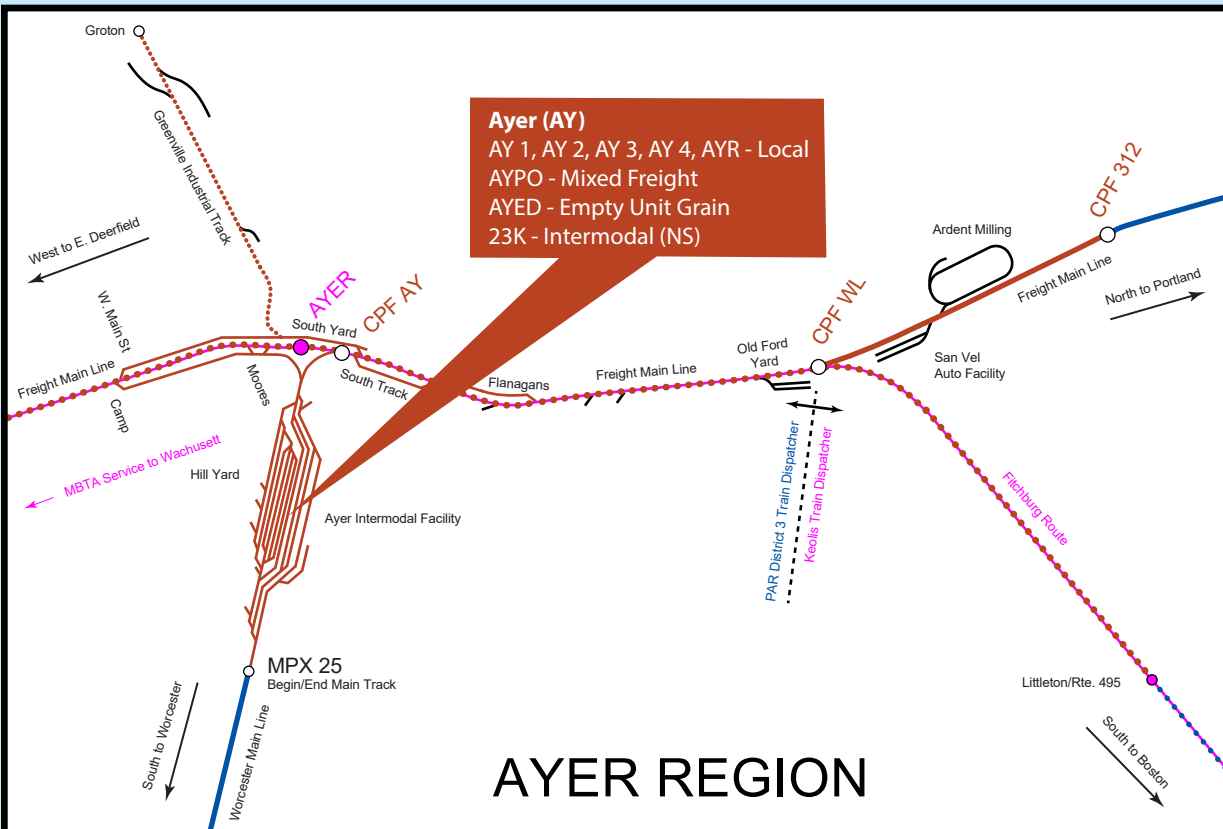
Dover (DO)
DOBO - Sand Train

Portsmouth
DO 1 - Local

Nashua (NA)
NA 1, NA 2 - Local

Lawrence (LA)
LA 1, LA 5 - Local
LA 2, LA 3 - Yard

CSX Transportation
Q426 forwards PAR cars from Selkirk Yd to Barbers
Q427 forwards PAR cars from Barbers to Selkirk Yd



| LEGEND | |
|---|---|
| — | Pan Am Railways (PAR) |
| --- | PAR Trackage Rights |
| --- | PAR Perpetual Freight Easement |
| — | Pan Am Southern (PAS) |
| --- | PAS Trackage Rights |
| --- | PAS Perpetual Freight Easement |
| — | CSX Transportation (CSXT) |
| --- | CSXT Trackage Rights |
| --- | CSXT Perpetual Freight Easement |
| — | Massachusetts Bay Transportation Authority (MBTA) |
| --- | MBTA Passenger Operating Rights on PAS |

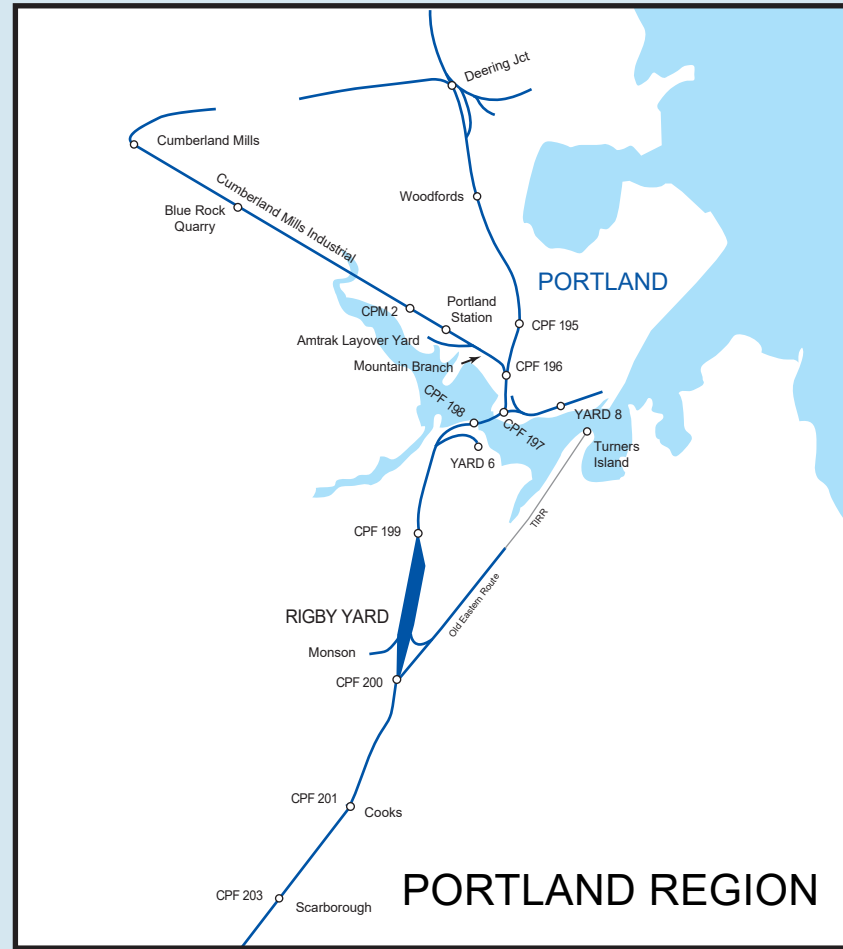
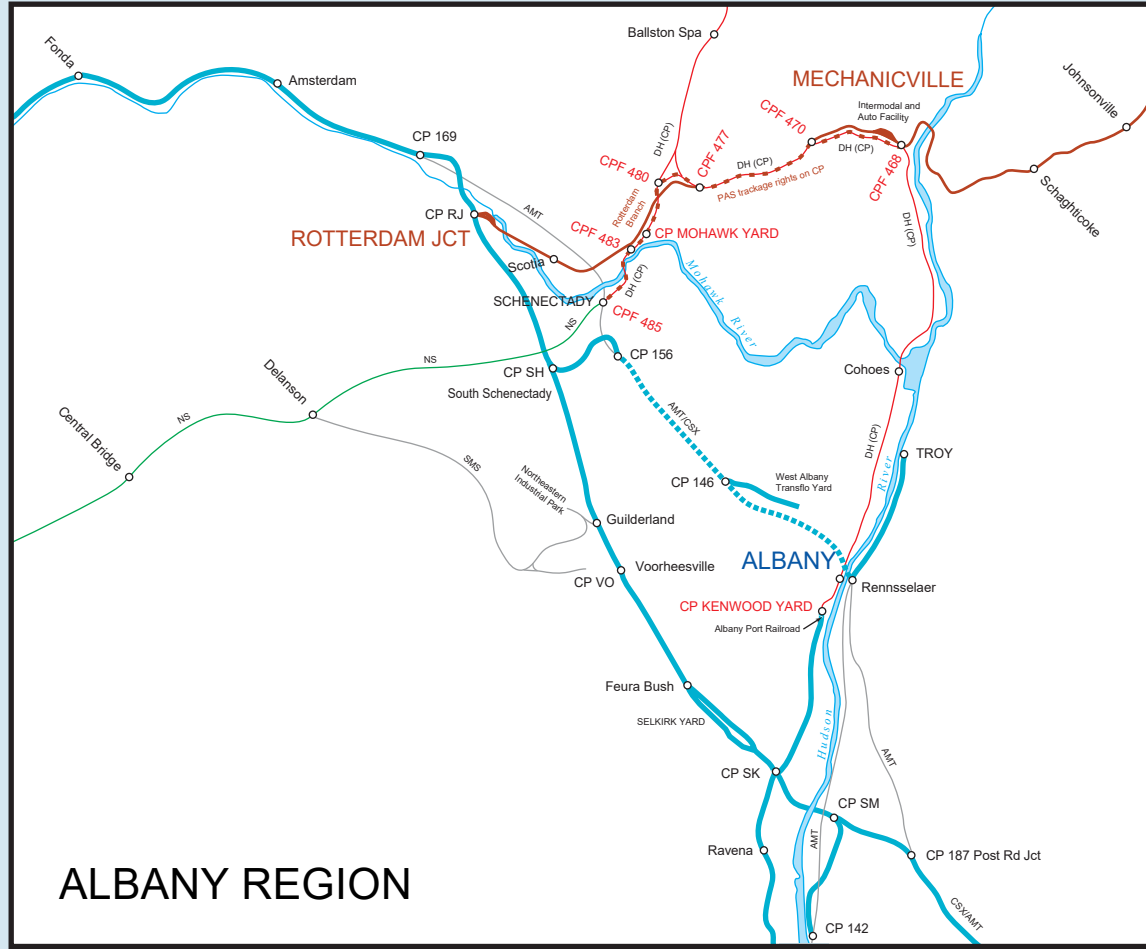
PAN AM RAILWAYS

BOSTON & MAINE CORP. • MAINE CENTRAL RAILROAD CO. • PAN AM SOUTHERN LLC • PORTLAND TERMINAL CO. • SPRINGFIELD TERMINAL RAILWAY CO.

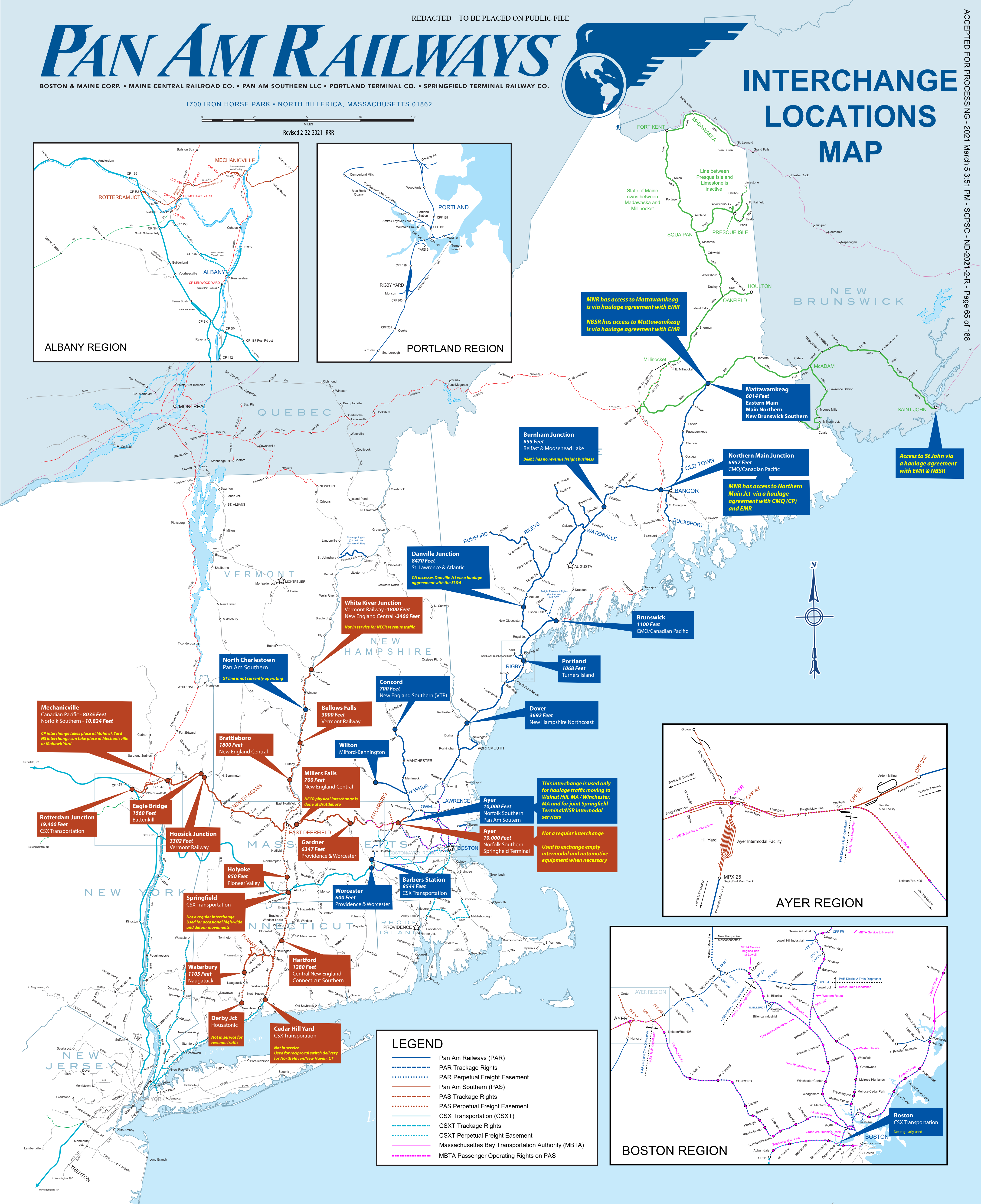
1700 IRON HORSE PARK • NORTH BILLERICA, MASSACHUSETTS 01862

0 25 50 75 100
MILES

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INTERCHANGE LOCATIONS MAP



MNR has access to Mattawamkeag
is via haulage agreement with EMR

NBSR has access to Mattawamkeag
is via haulage agreement with EMR

Mattawamkeag
6014 Feet
Eastern Main
Main Northern
New Brunswick Southern

Access to St John via
a haulage agreement
with EMR & NBSR

Northern Main Junction
6957 Feet
CMQ/Canadian Pacific

MNR has access to Northern
Main Jct via a haulage
agreement with CMQ (CP)
and EMR

Burnham Junction
655 Feet
Belfast & Moosehead Lake

B&M has no revenue freight business

Danville Junction
8470 Feet
St. Lawrence & Atlantic

CN accesses Danville Jct via a haulage
agreement with the SL&A

White River Junction
Vermont Railway - 1800 Feet
New England Central - 2400 Feet

Not in service for NECR revenue traffic

North Charlestown
Pan Am Southern

ST line is not currently operating

Concord
700 Feet
New England Southern (VTR)

Bellows Falls
3000 Feet
Vermont Railway

Brattleboro
1800 Feet
New England Central

Millers Falls
700 Feet
New England Central

NECR physical interchange is
done at Brattleboro

Gardner
6347 Feet
Providence & Worcester

Providence & Worcester

Worcester
600 Feet
Providence & Worcester

Providence & Worcester

Barbers Station
8544 Feet
CSX Transportation

CSX Transportation

Springfield
CSX Transportation

Not a regular interchange
Used for occasional high-wide
and detour movements

Waterbury
1105 Feet
Naugatuck

Naugatuck

Derby Jct
Housatonic

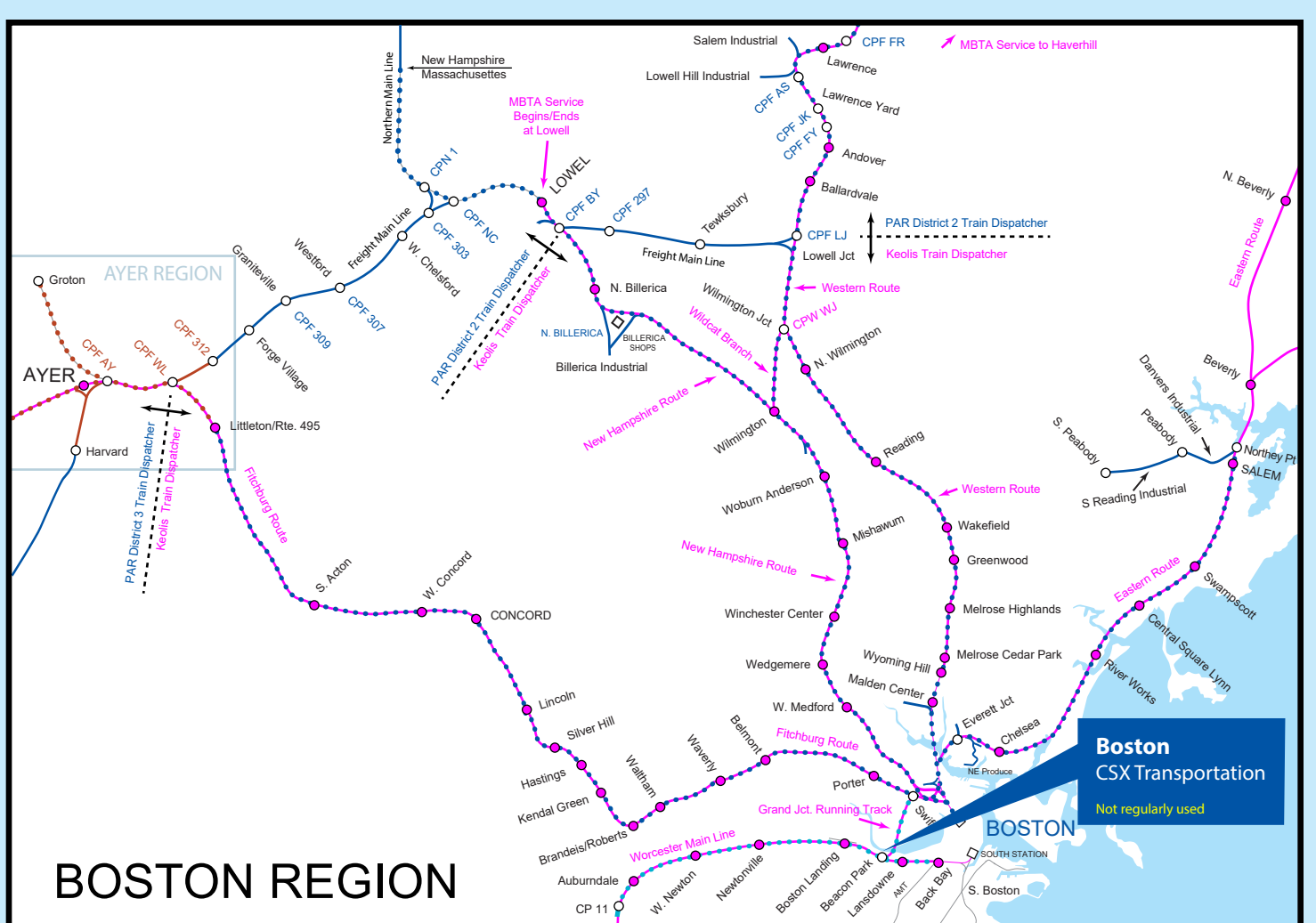
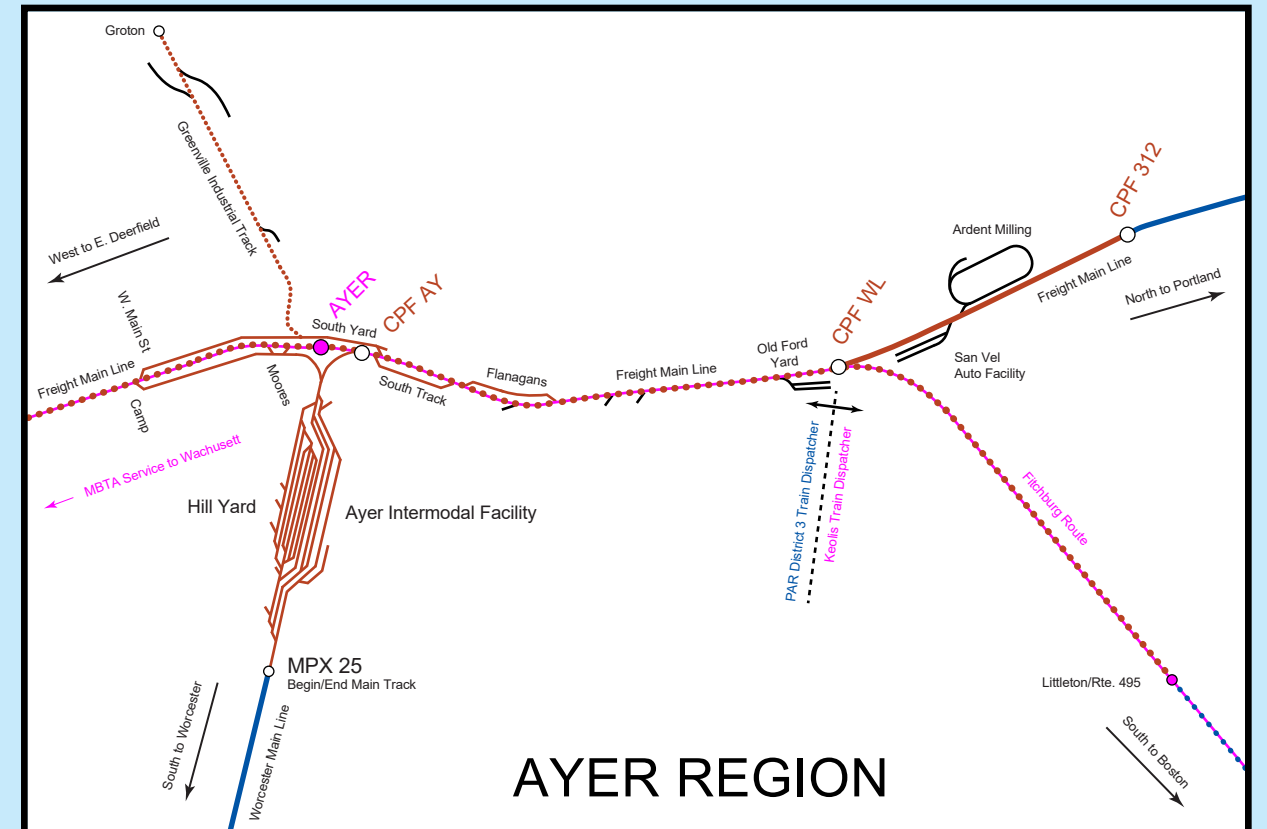
Not in service for
revenue traffic

Cedar Hill Yard
CSX Transportation

Not in service
Used for reciprocal switch delivery
for North Haven/New Haven, CT

This interchange is used only
for haulage traffic moving to
Walnut Hill, MA / Winchester,
MA and for joint Springfield
Terminal/NSR intermodal
services

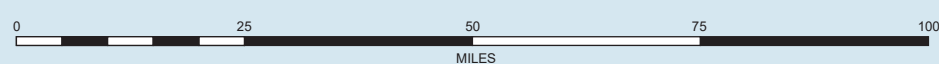
Not a regular interchange
Used to exchange empty
intermodal and automotive
equipment when necessary



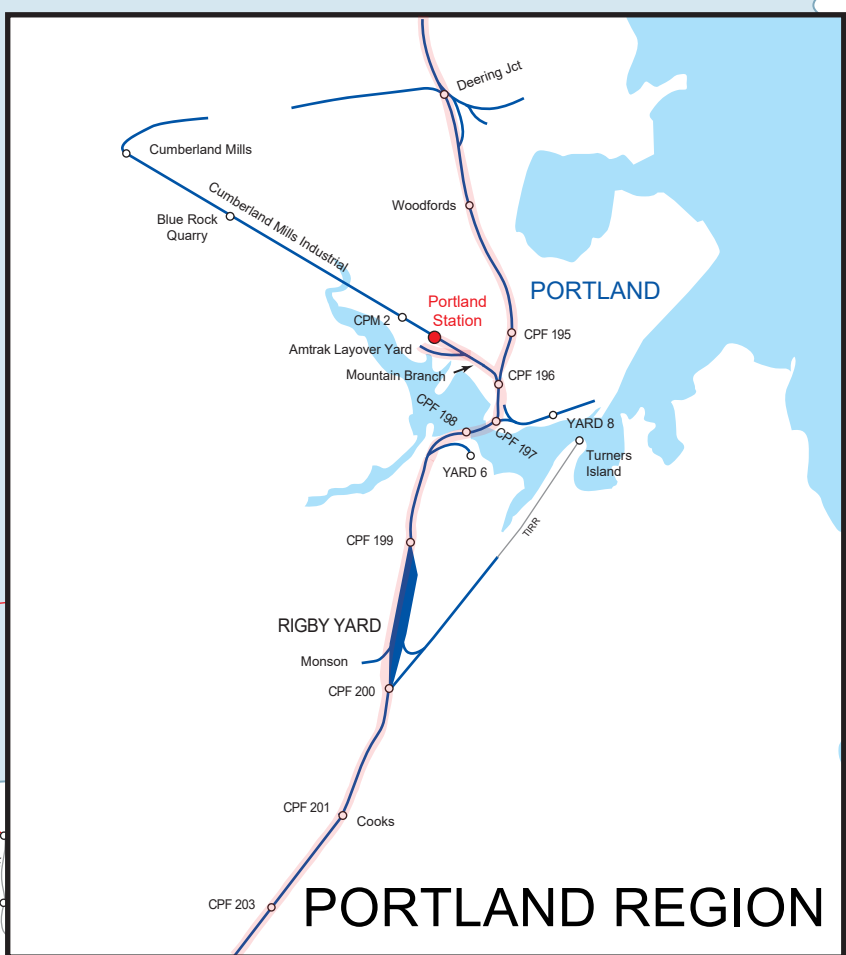
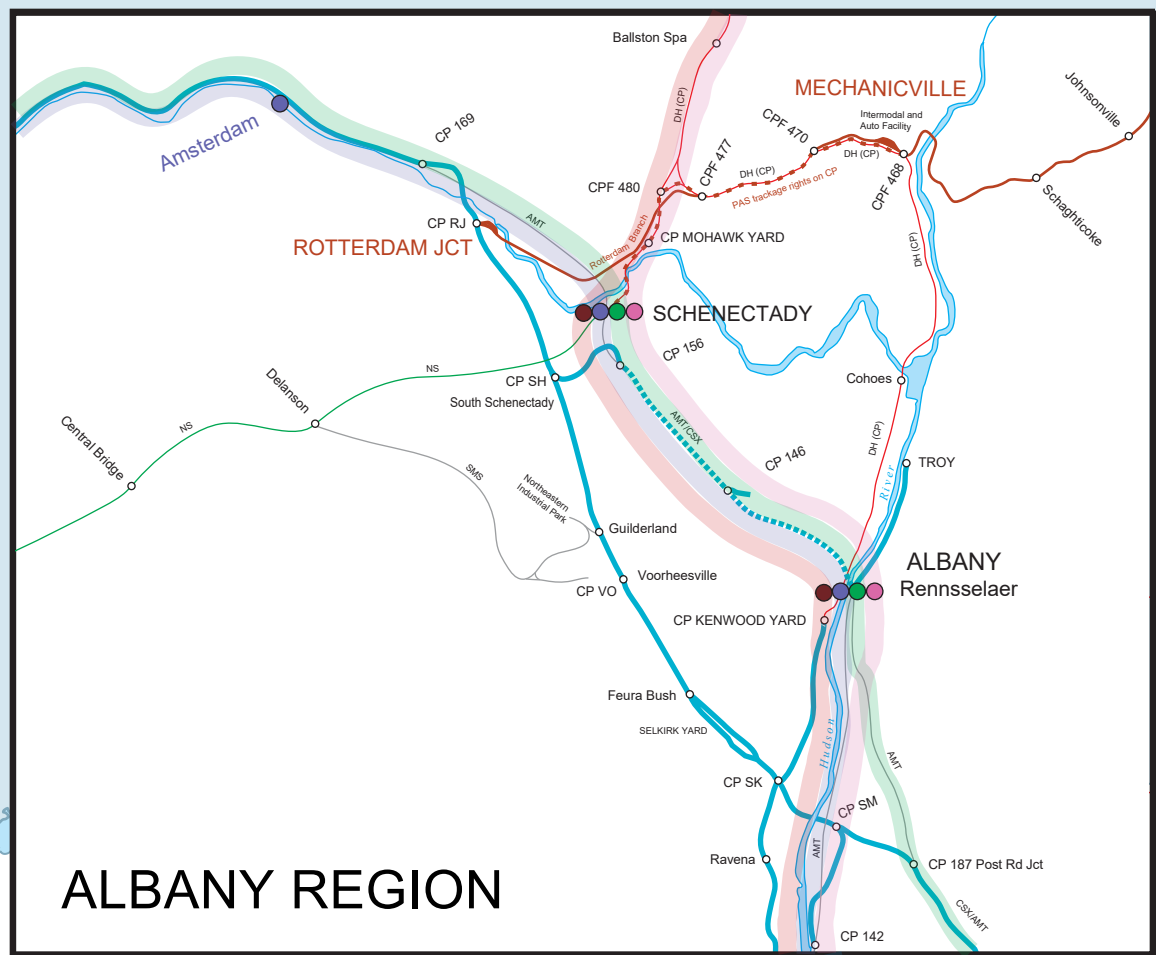


SERVICE ROUTES MAP

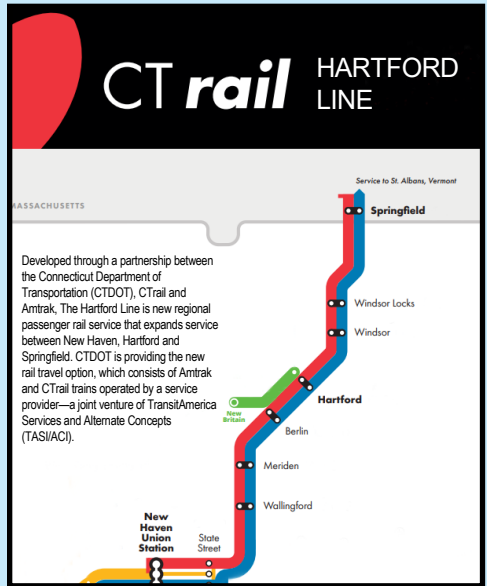
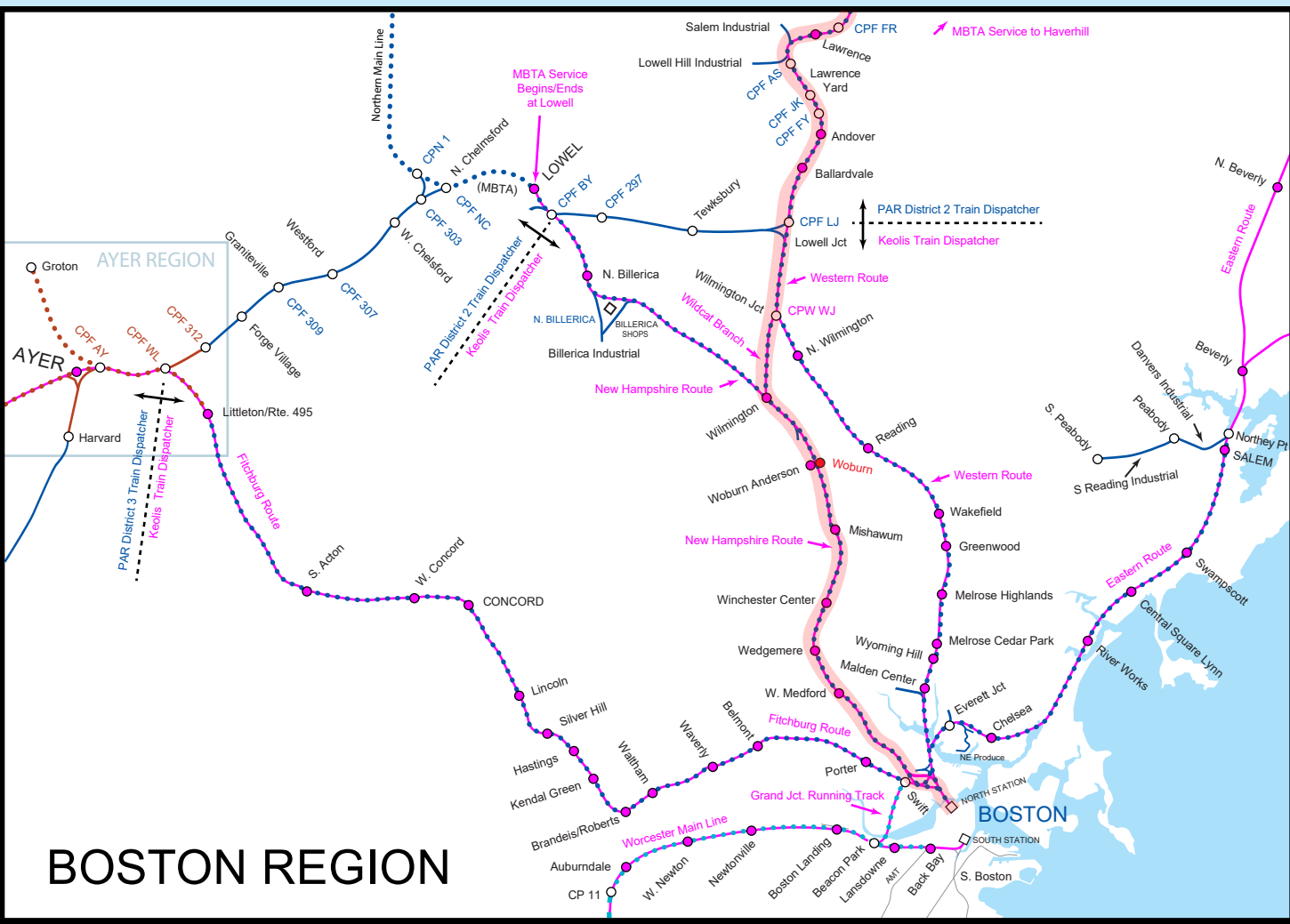
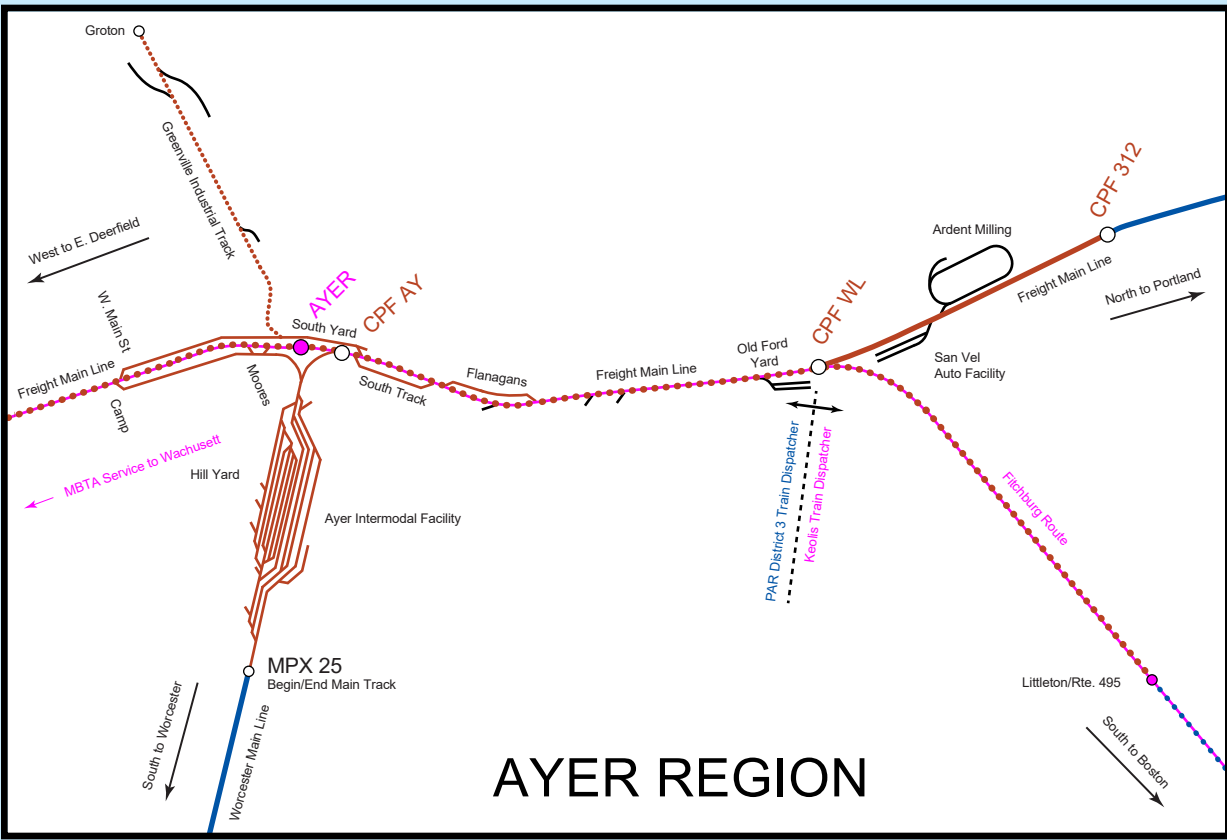
- ADIRONDACK SERVICE**
Between New York City
and Montreal QC
- ETHAN ALLEN EXPRESS**
Between New York City
and Rutland VT
- VALLEY FLYER SERVICE**
Between New Haven CT
and Greenfield MA
- DOWNEASTER SERVICE**
Between Boston MA
and Brunswick ME
- HARTFORD LINE**
Between New Haven CT
and Springfield MA
- VERMONT SERVICE**
Between Washington DC
and St Albans VT
- EMPIRE SERVICE**
Between New York City
and Niagara Falls NY
- LAKE SHORE SERVICE**
Between Boston MA
and Chicago IL



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- ### LEGEND
- Pan Am Railways (PAR)
 - PAR Trackage Rights
 - PAR Perpetual Freight Easement
 - Pan Am Southern (PAS)
 - PAS Trackage Rights
 - PAS Perpetual Freight Easement
 - CSX Transportation (CSXT)
 - CSXT Trackage Rights
 - CSXT Perpetual Freight Easement
 - Massachusetts Bay Transportation Authority (MBTA)
 - MBTA Passenger Operating Rights on PAS



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 2

Agreement and Plan of Merger

AGREEMENT AND PLAN OF MERGER

by and among

Pan Am Systems, Inc.

and

**Timothy Mellon,
as Shareholder Representative,**

CSX Corporation,

747 Merger Sub 1, Inc.

and

747 Merger Sub 2, Inc.

Dated as of November 30, 2020

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| AGREEMENT AND PLAN OF MERGER | 1 |
| ARTICLE I DEFINITIONS | 3 |
| 1.1 Definitions | 3 |
| ARTICLE II THE MERGER; CLOSING | 23 |
| 2.1 The Merger | 23 |
| 2.2 Closing | 23 |
| 2.3 Effective Time | 23 |
| 2.4 Certificate of Incorporation; Bylaws. | 23 |
| 2.5 Directors and Officers..... | 24 |
| 2.6 Effect on Capital Stock | 24 |
| 2.7 Closing Obligations | 25 |
| 2.8 Final Cash Adjustment..... | 26 |
| 2.9 Qualified and Non-Qualified Investors..... | 28 |
| 2.10 Withholding Taxes..... | 29 |
| ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY | 29 |
| 3.1 Organization and Authority | 29 |
| 3.2 Capitalization of the Company and the Acquired Entities..... | 30 |
| 3.3 No Conflict | 31 |
| 3.4 Absence of Certain Changes or Events..... | 32 |
| 3.5 Financial Statements | 32 |
| 3.6 Contracts and Commitments..... | 33 |
| 3.7 Absence of Undisclosed Liabilities | 35 |
| 3.8 Brokers and Other Advisors..... | 35 |
| 3.9 Real Property | 35 |
| 3.10 Intellectual Property..... | 36 |
| 3.11 Transactions with Affiliates..... | 38 |
| 3.12 Litigation and Orders | 38 |
| 3.13 Employee Benefit Plans..... | 39 |
| 3.14 Workforce | 41 |
| 3.15 Compliance with Laws | 42 |
| 3.16 Authorizations..... | 42 |
| 3.17 Taxes..... | 42 |
| 3.18 Insurance | 44 |
| 3.19 Environmental Matters | 45 |
| 3.20 Ownership of Tangible Personal Property | 46 |
| 3.21 Certain Business Practices | 46 |
| 3.22 U.S. Trade Laws | 46 |
| 3.23 Sufficiency of Assets | 46 |

| | | |
|---|--|----|
| 3.24 | Customers and Suppliers | 46 |
| 3.25 | No Other Representations and Warranties..... | 47 |
| ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUBS | | 48 |
| 4.1 | Organization, Standing and Entity Power..... | 48 |
| 4.2 | Authority | 48 |
| 4.3 | No Conflict | 48 |
| 4.4 | Financing | 49 |
| 4.5 | Solvency..... | 49 |
| 4.6 | Operations and Ownership of Merger Sub | 49 |
| 4.7 | Parent SEC Documents..... | 49 |
| 4.8 | Brokers and Other Advisors..... | 50 |
| 4.9 | No Other Representations and Warranties..... | 50 |
| ARTICLE V COVENANTS..... | | 50 |
| 5.1 | Covenants of the Company | 50 |
| 5.2 | Cooperation; Efforts to Close | 55 |
| 5.3 | Directors' and Officers' Indemnification and Insurance | 57 |
| 5.4 | Publicity | 58 |
| 5.5 | Insurance Recovery for the Hoosac Tunnel..... | 59 |
| 5.6 | Reorganization Treatment..... | 59 |
| 5.7 | Further Assurances | 59 |
| 5.8 | No Solicitation | 59 |
| 5.9 | Notification of Certain Matters | 60 |
| 5.10 | Non-Solicitation..... | 60 |
| 5.11 | Intercompany Accounts | 60 |
| 5.12 | Intercompany Agreements | 60 |
| 5.13 | Confidentiality | 61 |
| 5.14 | Release | 61 |
| 5.15 | Payoff Letters..... | 62 |
| 5.16 | Pre-Closing Disposition..... | 63 |
| 5.17 | Change in Control Severance..... | 63 |
| 5.18 | | 63 |
| 5.19 | ST/PAS Matters | 64 |
| ARTICLE VI TAX MATTERS..... | | 64 |
| 6.1 | Preparation of Tax Returns by the Company..... | 64 |
| 6.2 | Cooperation..... | 64 |
| 6.3 | Transfer Taxes and Fees | 65 |
| 6.4 | | 65 |
| ARTICLE VII CONDITIONS TO THE MERGER | | 65 |
| 7.1 | Conditions to the Obligations of Parent, Merger Subs and the Company | 65 |
| 7.2 | Conditions to the Obligations of Parent and Merger Subs..... | 66 |
| 7.3 | Conditions to the Obligations of the Company..... | 67 |

| | |
|---|----|
| ARTICLE VIII TERMINATION | 67 |
| 8.1 Termination..... | 67 |
| 8.2 Effect of Termination..... | 69 |
| 8.3 Termination Fee..... | 69 |
| ARTICLE IX MISCELLANEOUS | 70 |
| 9.1 Shareholder Representative | 70 |
| 9.2 Non-Survival of Representations, Warranties; Indemnification..... | 72 |
| 9.3 Environmental Liabilities Associated with Identified CERCLA Sites | 75 |
| 9.4 Environmental Escrow Account Disbursement Procedures | 77 |
| 9.5 Assignment | 80 |
| 9.6 No Third-Party Beneficiaries..... | 80 |
| 9.7 Expenses | 80 |
| 9.8 Amendment and Modification | 80 |
| 9.9 Notices | 80 |
| 9.10 Governing Law | 83 |
| 9.11 Severability | 83 |
| 9.12 Waiver..... | 83 |
| 9.13 Counterparts; Facsimile | 84 |
| 9.14 Entire Agreement..... | 84 |
| 9.15 Interpretation..... | 84 |
| 9.16 Enforcement in Equity and at Law | 84 |
| 9.17 Time of Essence..... | 84 |

LIST OF EXHIBITS

| | |
|-----------|---|
| EXHIBIT A | CLOSING DATE FINANCIAL PRINCIPLES |
| EXHIBIT B | ACQUIRED ENTITIES |
| EXHIBIT C | EXCLUDED ENTITIES |
| EXHIBIT D | ALLOCATION STATEMENT |
| EXHIBIT E | PERMA TREAT TERM SHEET |
| EXHIBIT F | PAN AM ASSIGNMENT |
| EXHIBIT G | EXAMPLE CALCULATIONS OF NET WORKING CAPITAL |
| EXHIBIT H | RAIL PROPERTY ROFR AGREEMENT |
| EXHIBIT I | FORM OF WRITTEN CONSENT |
| EXHIBIT J | FORM OF ESCROW AGREEMENT |
| EXHIBIT K | PRE-CLOSING DISPOSITION PLAN |
| EXHIBIT L | LETTER OF TRANSMITTAL |
| EXHIBIT M | SAMPLE INDEBTEDNESS CALCULATION |
| EXHIBIT N | SAMPLE TRAILING AMOUNT CALCULATION |
| EXHIBIT O | FORM OF R&W CERTIFICATE |

REDACTED – TO BE PLACED ON PUBLIC FILE

LIST OF DISCLOSURE SCHEDULES

Company Disclosure Schedules

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of November 30, 2020 (this “Agreement”), is by and among Pan Am Systems, Inc., a Florida corporation (the “Company”), Timothy Mellon, solely in his capacity as representative of the Shareholders as set forth herein (the “Shareholder Representative”), CSX Corporation, a Virginia corporation (“Parent”), 747 Merger Sub 1, Inc., a Delaware corporation (“Merger Sub 1”), and 747 Merger Sub 2, Inc., a Delaware corporation (“Merger Sub 2” and together with Merger Sub 1, the “Merger Subs”). The Company, Shareholder Representative, Parent, Merger Sub 1 and Merger Sub 2 are referred to collectively herein as the “Parties” and each individually as a “Party.”

Background

WHEREAS, the Company owns or controls the Acquired Entities, which are engaged in the business of operating two regional Class II railroads (the “Business”);

WHEREAS, the Parent desires to acquire the Company through (i) a merger of Merger Sub 1 with the Company in which the Company is the Surviving Corporation (the “First Merger”) and (ii) a merger of the Company into Merger Sub 2 in which Merger Sub 2 is the Surviving Corporation (the “Second Merger,” and together with the First Merger, the “Merger”);

WHEREAS, the respective Boards of Directors of Parent, Merger Sub 1 and Merger Sub 2 have approved and declared advisable this Agreement and the Merger on the terms and subject to the conditions set forth in this Agreement and have authorized the execution and delivery hereof;

WHEREAS, the Board of Directors of the Company has unanimously (i) determined that it is in the best interests of the Company and the Shareholders, and declared it advisable, to enter into this Agreement with Parent, Merger Sub 1 and Merger Sub 2 providing for the Merger in accordance with the DGCL and the FBCA, (ii) approved this Agreement and the Contemplated Transactions in accordance with the FBCA and (iii) adopted a resolution recommending this Agreement be adopted by the Shareholders;

WHEREAS, in connection with the execution and delivery of this Agreement, the Company will deliver to Parent the unanimous written consent of the Shareholders adopting this Agreement and approving the Merger and the Contemplated Transactions (the “Written Consent”) in the form of Exhibit I hereto;

WHEREAS, in connection with the execution and delivery of this Agreement, and as an inducement and condition to Parent’s willingness to enter into this Agreement, all of the Shareholders have entered into a Support Agreement (the “Support Agreement”) agreeing to certain matters with respect to the Contemplated Transactions;

WHEREAS, in connection with the execution of this Agreement, Parent shall deliver to the Shareholders in accordance with the Allocation Statement, by wire transfer of immediately available funds in accordance with wire transfer instructions delivered by the the Shareholder Representative to Parent an amount equal to [REDACTED] (the “Deposit”); and

WHEREAS, for Federal income tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of Section 368(a)(1)(A) and (a)(2)(D) of the Code, and the Treasury Regulations, and that this Agreement constitutes, and hereby is adopted as, a plan of reorganization.

Terms

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions.

(a) Certain Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Accredited Investor” means an “accredited investor” as that term is defined in Rule 501 of Regulation D of the Securities Act.

“Acquired Entities” means all of the entities listed on Exhibit B attached hereto; and for the avoidance of doubt, not including any of the Excluded Entities listed on Exhibit C attached hereto, which are to be transferred in connection with the Pre-Closing Disposition.

“Acquired Entity PRPs” means the entities listed on Schedule 1.1(c).

“Action” means any claim, action, suit, subpoena, citation, summons, litigation, prosecution, arbitration, inquiry, request for documents, audit, mediation, proceeding or investigation commenced, brought, conducted or heard by or before any Governmental Authority, whether civil, criminal, administrative, judicial or investigative.

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with, such Person (including, in the case of Parent, from and after the Closing, the Surviving Corporation and the Acquired Entities). For purposes of this definition, the term “control” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interests, by contract or otherwise. The terms “controlled” and “controlling” have meanings correlative thereto.

“Agreement” has the meaning set forth in the preamble.

“Allocation Statement” means the Statement attached hereto as Exhibit D that shows the allocation by Shareholder of amounts payable to or by any Shareholder under this Agreement.

“Ancillary Documents” means any of the following: the Support Agreement, the Written Consent, the Escrow Agreement, the Pan Am Assignment, the Perma Treat Agreement and the Rail Property ROFR Agreement.

“Applicable Remediation Standards” means the applicable clean up, remedial, corrective or similar standards promulgated by or acceptable to a Governmental Authority having jurisdiction over any such activities at the Identified CERCLA Sites; *provided* that, with respect to any property at the Identified CERCLA Sites owned or controlled by the Acquired Entity PRPs, such standards will be those applicable to railroad, industrial or commercial use, as appropriate.

“Articles of Merger” has the meaning set forth in Section 2.3.

“Audited Financial Statements” has the meaning set forth in Section 3.5(a).

“Authorizations” means permits, licenses, certifications, approvals, registrations, consents, authorizations, franchises, variances and exemptions, in each case, issued or granted by a Governmental Authority, including by the STB.

“Ayer Switching Agreement” means that certain Ayer Switching Agreement dated April 9, 2009, by and between PAS and ST.

“Base Merger Consideration” means [REDACTED]

“Bonds” has the meaning set forth in Section 3.18.

“Business” has the meaning set forth in the preamble, and for the avoidance of doubt does not include any business or operations conducted by Perma Treat.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in New York, New York, generally are required or authorized by Law or executive order to close, or (iii) a day when the New York Stock Exchange is closed.

[REDACTED]

“Cash” means the aggregate value of the Company and the Acquired Entities’ unrestricted cash and cash equivalents as defined by and determined in accordance with the Closing Date Financial Principles, including marketable securities, bank account deposits, undeposited funds, short term investments and checks and wires deposited but not yet cleared or available and for the avoidance of doubt net of any uncleared checks and wires). Notwithstanding anything herein to the contrary “Cash” (i) shall not include cash and cash equivalents not freely usable or distributable due to legal, regulatory or contractual constraints including, (A) all cash associated with the Positive Train Control Program (which, for the avoidance of doubt, shall mean that the Merger Consideration shall be reduced by the excess of (x) the amount of cash received in connection with the Positive Train Control Program, over (y) the amount spent pursuant to such program), (B) all amounts held in escrow in connection with any merger, consolidation or acquisition of stock or assets effected by the Company or any Acquired Entity to secure obligations with respect to any such transaction (other than the Contemplated Transactions) and (C) all deposits with respect to leases or sublease agreements, and (ii) shall be reduced by the aggregate amount of any net insurance proceeds actually received by the Company or any Acquired Entity not taken into account in determining Net Working Capital from a third party insurer in respect of a casualty loss with respect to the Business (with any such reduction offset by any amounts actually paid to third parties or taken into account in determining Net Working Capital in order to redress such casualty loss).

“Cash Merger Consideration” means [REDACTED] of the Estimated Merger Consideration.

“Certificate of Merger” has the meaning set forth in Section 2.3.

“Closing” has the meaning set forth in Section 2.2.

“Closing Cash” means the sum of the PAR Cash and the PAS Cash as of immediately prior to Closing calculated in accordance with the Closing Date Financial Principles.

“Closing Date” has the meaning set forth in Section 2.2.

“Closing Date Financial Principles” means (i) the accounting practices, policies, judgments and methodologies set forth on Exhibit A attached hereto and (ii) to the extent not inconsistent with the foregoing clause, first, (a) those that were used in the preparation of the Unaudited Interim Financial Statements, second, (b) those that were used in the preparation of the Audited Financial Statements, and third (c) GAAP.

“Closing Trailing Amount” means the Trailing Amount as of immediately prior to Closing.

“Closing Unpaid Transaction Expenses” means the Unpaid Transaction Expenses as of immediately prior to Closing.

“Closing Unpaid Indebtedness” means the sum of the PAR Unpaid Indebtedness and the PAS Unpaid Indebtedness as of immediately prior to Closing.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and “Treasury Regulations” means the final, temporary or proposed tax regulations promulgated thereunder, as such regulations may be amended from time to time.

“Company” has the meaning set forth in the preamble.

“Company Material Adverse Effect” means any Event (i) that has had or that would reasonably be expected to have, individually or in the aggregate, a material and adverse effect upon the business, assets, liabilities, financial condition or operating results of the Company and the Acquired Entities, taken as a whole, or (ii) that has prevented or materially impaired or delayed, or that would reasonably be expected to prevent or materially impair or delay, the ability of the Company or any Shareholder to consummate the Contemplated Transactions or perform its or their obligations under this Agreement and the Ancillary Documents; *provided*, however, that no Event to the extent attributable to, arising out of or in connection with any of the following, either alone or in combination, shall be deemed to constitute or shall be taken into account in determining whether there has been or there would reasonably be expected to be a “Company Material Adverse Effect” pursuant to clause (i) above: (A) changes in international, national, regional, local or industry economic, market (financial or other) or business conditions, including, without limitation, any disruption thereof and any decline in the price of any security or any market index, (B) general changes in the economy or industry in which the Company and the Acquired Entities operate, (C) national, regional, local or international political or social conditions or unrest (including riots, protests, and demonstrations of whatever kind or for whatever purpose), including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States or other nation, or any of the territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or other nation, (D) changes or proposed changes in, or in the binding interpretation or implementation of applicable accounting principles (including GAAP) or applicable Laws, (E) general regulatory changes, (F) any flood, hurricane, typhoon, tornado, tsunami,

earthquake, pandemic (including COVID-19), pestilence, outbreak of disease or other public health care crisis or natural disaster, act of God or other force majeure event, (G) the execution and delivery of this Agreement or the public announcement or pendency of the Contemplated Transactions, including any impact on employees and third parties, or the performance of this Agreement and the Contemplated Transactions (*provided* that this clause (G) shall not apply to any representations and warranties that, by their terms specifically address the consequences arising out of the performance of this Agreement or the consummation of the Contemplated Transactions, including for purposes of Section 7.2 and Section 8.1), (H) taking or not taking any action as required by this Agreement (other than pursuant to Section 5.1(b)(i)), or taking or not taking any action at the written request of, or with the written consent of, Parent, (I) the failure, in and of itself, of the Company and any Acquired Entity to meet any published, internally prepared or other estimates of revenues for any period, earnings or other financial projections, performance measures or operating statistics (*provided* that the underlying causes thereof, to the extent not otherwise excluded by this definition, may be deemed to contribute to a “Company Material Adverse Effect”) and *provided* further that, with respect to any matter described in any of the foregoing clauses (A), (B), (C), (D), (E) and (F) such matter shall only be excluded so long as such matter does not have a materially disproportionate effect on the Company and Acquired Entities taken as a whole relative to other entities operating in the industry in which the Company and the Acquired Entities operate.

“Confidential Information” has the meaning set forth in Section 5.13.

“Confidentiality Agreement” means the Confidentiality Agreement between Parent and the Company dated June 18, 2020.

“Consideration Deficiency” has the meaning set forth in Section 2.8(a)(ii).

“Consideration Surplus” has the meaning set forth in Section 2.8(a)(i).

“Contemplated Transactions” means the Merger together with the other transactions contemplated by this Agreement and the Ancillary Documents.

“Contracts” means all notes, bonds, mortgages, indentures, leases, licenses, sublicenses, agreements, contracts, commitments and undertakings, written or oral, including any amendments thereto, to which any Person is a party, an obligor or a beneficiary, or by which any of its assets or properties is bound.

“Contribution Protection” means protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) or as provided under counterpart State Environmental Laws, for Remedial Action Liabilities with respect to the Identified CERCLA Sites.

“Conveyance Amount” means

[REDACTED]

“Credit Facility” means that certain Second Amended and Restated Credit Agreement, dated April 8, 2014, between Pan Am Railways, Inc. and Citibank, N.A.

“Damages” means any damages, loss, Liabilities, interest, cost or expenses (including reasonable expenses) of investigation and reasonable attorneys’ fees and expenses in connection with any action, suit or proceeding whether involving a third-party claim or a claim solely between the Parties; *provided* that “Damages” shall exclude (i) punitive or exemplary damages, except to the extent such damages are paid to a third party in a Third Party Claim and (ii) consequential, special, indirect or similar damages (including, for the purposes of clause (ii), lost profits, diminution of value, or damages calculated on multiples of earnings or other metrics approaches), in the case of this clause (ii) to the extent not reasonably foreseeable.

“Data Room” means the virtual data room established in connection with the Contemplated Transactions, located at <https://datasiteone.merrillcorp.com/global/projects> under project “747”.

“Deposit” has the meaning set forth in the recitals.

“DGCL” means the General Corporation Law of the State of Delaware.

“Disclosure Schedules” means the Disclosure Schedules attached hereto being delivered by the Company on the date hereof immediately prior to the execution hereof.

“Dispute Notice” has the meaning set forth in Section 2.8(b).

“Effective Time” has the meaning set forth in Section 2.3.

“Employee” means any employee or any individual consultant or independent contractor employed by, or providing services to, the Company or any Acquired Entity, including those employees on medical leave, family leave, military leave or personal leave under applicable policies. Nothing in this definition is intended to expand the definition of employee for the purposes of any employee protective conditions imposed by the STB or expand application of such conditions to non-applicants.

“Employee Benefit Plan” means any “employee benefit plan” within the meaning of Section 3(3) of ERISA, and each plan, program, arrangement, agreement or policy, whether or not subject to ERISA, and whether written or unwritten, relating to: compensation, employment, consulting, severance, retention, referral incentive, phantom stock, stock purchase, stock option or other equity-based compensation, bonus, incentive, vacation, deferred compensation, supplemental income, employee loan, collective bargaining, change-of-control, transaction bonus, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation benefits, perquisites, disability or sick leave benefits, employee assistance program, workers’ compensation, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case (i) sponsored, maintained or contributed to, or required to be sponsored, maintained or contributed to, by the Company or any Acquired Entity for the benefit of any current or former employee, officer, director or individual consultant of the Company or any Acquired Entity; or (ii) under which the Company or any Acquired Entity has any actual or contingent Liability, whether present or future.

“Encumbrances” means any claims, liens, encumbrances, pledges, leases, subleases, occupancy agreements, servitudes, mortgages, deeds of trust, security interests, restrictions on transfer, title retentions, rights of first offer, rights of first refusal, easements, options, charges or similar rights, or arrangements of any Person, of any kind whatsoever in respect of a property or asset. Notwithstanding the foregoing, “Encumbrances” shall not include any restrictions under applicable Securities Laws.

“Entity Intellectual Property” means the Entity Owned Intellectual Property and the Entity Licensed Intellectual Property.

“Entity IT Assets” means any and all IT Assets owned, licensed or leased by the Company or any Acquired Entity.

“Entity Licensed Intellectual Property” means any and all Intellectual Property owned by a third party that is licensed or sublicensed (or purported to be licensed or sublicensed), or under which a covenant not to be sued is granted (or purported to be granted), to the Company or an Acquired Entity.

“Entity Owned Intellectual Property” means any and all Intellectual Property that is owned, or purported to be owned, by the Company or any Acquired Entity.

“Environmental Escrow Account” has the meaning set forth in the Escrow Agreement.

“Environmental Escrow Amount” means [REDACTED]

“Environmental Escrow Funds” means the amount in the Environmental Escrow Account from time to time.

“Environmental Laws” means all applicable international, foreign, federal, state and local Laws concerning pollution or protection of the environment, worker and human health and safety (as related to Releases to Hazardous Substances), Releases or threatened Releases of Hazardous Substances, or the manufacture, processing, distribution, use, treatment, storage, transport or handling of, or exposure to, Hazardous Substances.

“Equity Interests” of any Person means any and all shares of capital stock, partnership interests, membership interests, units of participation or other equity interests of such Person, and all warrants, options or purchase rights, and other securities exchangeable for or convertible or exercisable into, any of the foregoing or otherwise entitle any other Person to share in the equity, profits, earnings, losses or gains of such Person.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated thereunder.

“ERISA Affiliate” means, with respect to any Person, any trade or business that is a member of the same controlled group of corporations as such Person, within the meaning of Section 414(b) of the Code, that is under common control with such Person, within the meaning of Section 414(c) of the Code, that is a member of the same affiliated service group as such Person, within the meaning of

Section 414(m) of the Code, or that is otherwise required to be aggregated with such Person pursuant to Section 414(o) of the Code.

“Escrow Agent” means Bank of New York Mellon.

“Escrow Agreement” means the agreement among Parent, the Seller Representative and the Escrow Agent in substantially the form and substance as set forth on Exhibit J hereto, which establishes the escrow accounts to deposit the Purchase Price Escrow Amount and the Environmental Escrow Amount.

“Estimated Closing Statement” means a statement agreed to by Parent and the Company reflecting estimates of the Closing Cash, the Closing Unpaid Indebtedness, the Closing Trailing Amount, the Closing Unpaid Transaction Expenses, the Interest Factor (if any) and the Net Working Capital Adjustment and, based on such amounts, a calculation of the Merger Consideration, the Merger Shares and the Cash Merger Consideration.

“Estimated Merger Consideration” means the Merger Consideration as set forth in the Estimated Closing Statement.

“Event” means any event, circumstance, change, occurrence, condition, state of facts or development or effect.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Excluded Entities” means those entities set forth on Exhibit C attached hereto and any entity into which any of them may be converted.

“FBCA” means the Florida Business Corporation Act.

“Final Calculation Statement” has the meaning set forth in Section 2.8(b).

“Final Cash Adjustment” means:

- (i) if the Final Merger Consideration exceeds the Estimated Merger Consideration, an upward dollar-for-dollar adjustment in an amount equal to the absolute value of such difference; or
- (ii) if the Final Merger Consideration is less than the Estimated Merger Consideration, a downward dollar-for-dollar adjustment in an amount equal to the absolute value of such difference.

“Final Merger Consideration” means the Merger Consideration as finally determined in accordance with Section 2.8.

“Final Resolution” means, with respect to each respective Identified CERCLA Site, any of the following:

- (i) the execution of a legally-binding Remedial Action Settlement with the USEPA and/or with other Governmental Authorities with jurisdiction over the Identified CERCLA Site,

which accords the Acquired Entity PRPs with Contribution Protection upon the payment to the USEPA or other Governmental Authority of an amount representing the Acquired Entity PRPs' share of the costs incurred by such Governmental Authority or other Persons for the performance of Remedial Actions required at such Site, and the payment by or on behalf of the relevant Acquired Entity PRPs of an amount equal to the Acquired Entity PRPs' share of the costs associated with the required Remedial Actions as determined pursuant to such Remedial Action Settlement (but not including any Post-Remediation OM&M costs);

(ii) the execution of a legally-binding Remedial Action Settlement with the USEPA and/or with other Governmental Authorities with jurisdiction over the Identified CERCLA Site, which accords the Acquired Entity PRPs with Contribution Protection and requires the Acquired Entity PRPs to perform specified Remedial Actions, and completion of the construction and installation of such Remedial Actions (but not including Post-Remediation OM&M) as confirmed by written approval by the relevant Governmental Authority of a written certification of completion of such Remedial Actions and payment by or on behalf of the relevant Acquired Entity PRPs of any amounts due under such Remedial Action Settlement (but not including costs related to Post-Remediation OM&M); or

(iii) the completion of the construction and installation of Remedial Actions at such Identified CERCLA Site required under any unilateral order or other legally binding requirement of a Governmental Authority (but not including Post-Remediation OM&M) as confirmed by written approval by the relevant Governmental Authority of a written certification of completion of the Remedial Action (or the equivalent thereof); or

(iv) the execution of a Remedial Action Settlement with a potentially responsible party ("PRP") group or one or more PRPs, providing for a cashout settlement of the Acquired Entity PRPs' Remedial Action Liabilities with respect to the Identified CERCLA Site and containing an obligation by the settling PRPs to defend, indemnify and hold harmless the Acquired Entity PRPs from and against claims asserted by Governmental Authorities or third parties for such Remedial Action Liabilities with respect to the Site, and payment by or on behalf of the relevant Acquired Entity PRPs of any amounts due under such Remedial Action Settlement.

"Financial Statements" has the meaning set forth in Section 3.5(a).

"First Certificate of Merger" has the meaning set forth in Section 2.3.

"First Merger" has the meaning set forth in the preamble.

"Fraud" means (i) a representation and warranty made by a Party in this Agreement that was false when made, (ii) to such Party's knowledge, such representation and warranty was false when made, (iii) such Party had the intent to induce another Party to act or refrain from acting, (iv) another Party acted in justifiable reliance on such false representation and warranty, and (v) the other Party suffers harm.

"Fundamental Representations" has the meaning set forth in Section 7.2(a).

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time, consistently applied.

“General Public License” means a general public software license, which provides end users the right to use, study, share, copy, and modify Software.

“Governmental Authority” means any domestic, foreign, local, municipal, Federal or state entity with applicable jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any governmental authority, department, board, bureau, agency, commission, court, tribunal, judicial or arbitral body or instrumentality of any union of nations, federation, nation, state, municipality, county, locality or other political subdivision, department or branch thereof.

“Guarantee” of or by any Person means any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) any Indebtedness of any primary obligor or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase property, securities or services for the purpose of assuring the owner of any Indebtedness of any primary obligor of the payment of such Indebtedness, or (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay any Indebtedness of such primary obligor.

“Hazardous Substances” means any material or substance that is or contains any (i) “hazardous substance,” “toxic substance,” “regulated substance,” “pollutant,” “contaminant,” “solid waste,” “residual waste,” “hazardous waste,” “petroleum” or words of similar import, as defined pursuant to any Law pertaining to the environment; (ii) any gasoline, diesel fuel, motor oil, waste or used oil, heating oil, kerosene and any other petroleum product or fraction of petroleum.; (iii) any polychlorinated biphenyls or substances containing PCBs; (iv) any asbestos or materials containing asbestos; (v) any per- or polyfluoroalkyl substances; and (v) any other material or substance regulated pursuant to, or for which liability can be imposed pursuant to, any Law pertaining to the environment.

“Hoosac Tunnel Costs” has the meaning set forth in Section 5.5.

“Hoosac Tunnel Loan” means, collectively, the Line of Credit Loan Agreement dated as of March 27, 2020 by and among Norfolk Southern Railway Company and Boston & Maine Corporation (collectively as Lenders), and Pan Am Southern, LLC (as Borrower), and amended by that First Amendment effective as of April 17, 2020, and the promissory notes issued thereunder.

“Identified CERCLA Sites” means the sites identified on Schedule 1.1(e).

“Inactive Acquired Entities” means Northern Railroad, Stony Brook Railroad Company, East Street, Inc., Guilford Motor Express, Inc., Pine Tree Corporation and Vermont & Massachusetts Railroad Company.

“Income Tax” means any Tax that is, in whole or in part, based on or measured by net income or gains, and any business franchise, withholding, branch profits or similar Tax imposed in lieu of a Tax on net income.

“Indebtedness” of the Company or any Acquired Entity means, without duplication, the aggregate amount of the following (including all accrued and unpaid interest and all prepayment penalties, breakage fees and exit fees that would be incurred in connection with the repayment thereof at such time), (i) all obligations of such entity for borrowed money, including under the Credit Facility, (ii) all obligations of such entity evidenced by bonds, debentures, notes, or similar contracts or instruments, (iii) all obligations of such entity evidenced by letters of credit, performance bonds, surety bonds, or similar contracts or instruments to the extent drawn and not repaid, (iv) all indebtedness of others secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property owned or acquired by the Company or any Acquired Entity, (v) all Guarantees by the Company or any Acquired Entity, (vi) all accrued and unpaid Pre-Closing Taxes of the Company and the Acquired Entities that constitute Income Tax, (vii) any Liability for any payroll Tax, the payment of which has been delayed pursuant to Section 2302 of the CARES Act or pursuant to Internal Revenue Service Notice 2020-65, (viii) all obligations for the deferred purchase price of assets, property, goods or services, including all seller notes and “earn-out” payments and purchase price adjustment payments, (ix) all capital lease obligations of the Company or any Acquired Entity determined in accordance with the GAAP, (x) all obligations under any swap, collar or other hedging arrangements, (xi) all obligations for any declared but unpaid dividend or other distribution in respect of the capital stock of the Company or any Acquired Entity, (xii) all obligations pursuant to any settlement agreement, judgement or consent decree, (xiii) project payables for capital expenditure, net of related deposits and receivables, (xiv) casualty reserve due to IBNR and specific case reserves in excess of [REDACTED] in the aggregate, (xv) all Liabilities related to the Company’s and the Acquired Entities’ Iron Horse Park and Deerfield locations in excess of [REDACTED] in the aggregate and (xvi) accounts payable which are greater than one year past due, which shall, in each case in this definition (other than clauses (xiv) and (xv)) be calculated solely by reference to the accounts of the Company and the Acquired Entities set forth in the example calculation attached as Exhibit M hereto. Notwithstanding the foregoing, Indebtedness shall not include, (x) operating or lease obligations other than as contemplated by subsection (ix) above, (y) deferred revenue with respect to any source and deferred tax liability, or (z) obligations solely between or among the Acquired Entities that are wholly owned by the Company. Notwithstanding the foregoing, in no event will any amounts owed by PAS to PAR be treated as Indebtedness for the purposes hereof.

“Indemnified Parties” has the meaning set forth in Section 5.3(a).

“Indemnified Taxes” means, except to the extent taken into account in the calculation of Indebtedness or Net Working Capital, any Liability incurred or suffered by Parent and its Affiliates (including, after the Closing, the Company and the Acquired Entities) arising in connection with, relating to or as a result of any (i) Tax for which the Company and any Acquired Entity is liable arising as a result of or in connection with the Pre-Closing Disposition or (ii) property and excise Tax imposed on the Company or any Acquired Entity by the Governmental Authorities set forth on Schedule 1.1(f) in respect of any Pre-Closing Tax Period but, in the case of this clause (ii) only, only if prior to the Closing such Governmental Authority shall have opened any examination or other inquiry, or shall have notified the Company or any Acquired Entity in writing of an intention to open any such examination or other inquiry,

in respect of any such property or excise Tax. Any amounts paid with respect to Indemnified Taxes shall be deemed, for all applicable Tax purposes, to be a dollar-for-dollar reduction to the Merger Consideration.

“Independent Accountant” means an independent nationally recognized auditing firm selected by Shareholder Representative and Parent that is not the independent auditing firm for any of Parent, Merger Subs, the Company or any Affiliate thereof (or if Shareholder Representative and Parent are unable to agree upon a firm, Shareholder Representative and Parent shall each select a firm and the two selected firms together shall select a third firm) which will act as the Independent Accountant.

“Insurance Policies” has the meaning set forth in Section 3.17(a).

“Intellectual Property” means any and all intellectual property rights and assets, and any and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (i) inventions (whether patentable or unpatentable and whether or not reduced to practice), patents and patent applications together with reissues, continuations, continuations-in-part, revisions, extensions, reviews, and reexaminations thereof; (ii) trademarks, service marks, trade dress, logos, domain names, and trade names, including goodwill associated therewith, and applications, registrations and renewals in connection therewith; (iii) works of authorship, copyrights, and applications, registrations and renewals in connection therewith; (iv) trade secrets and other confidential business information (including confidential and proprietary ideas), research and development, know how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals); and (v) Software.

“Interest Factor” means, if and only if the Closing has not occurred on or before [REDACTED] an amount equal to simple interest from [REDACTED] through the Closing Date on [REDACTED] at a rate of [REDACTED] per annum calculated based on a 365-day year.

“IT Assets” means any tangible or digital computer systems (including computers, screens, servers, workstations, routers, hubs, switches, networks, firmware, middleware, Software, data communications lines and hardware) and all other information technology equipment, including all documentation related to the foregoing.

“Knowledge” means, (i) with respect to the Company and the Acquired Entities, the actual knowledge of and by the executives listed on Schedule 1.1(a), and (ii) with respect to Parent, the actual knowledge of the executives listed on Schedule 1.1(b), in each case without investigation.

“Laws” mean all federal, state, local or foreign constitutions, common laws, laws, codes, statutes, ordinances, rules, rulings, or regulations, Orders, charges, directives, determinations, executive orders, writs, judgments, injunctions, or decrees of any Governmental Authority.

“Liability” means any indebtedness, guarantees, obligations and other liability whether known or unknown, whether asserted or unasserted, whether absolute or contingent (or based upon any contingency), whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to

become due, including any fines, penalties, losses, costs, interest, charges, expenses, damages, assessments, deficiencies, judgments, awards or settlements.

“Licensed IP Agreements” has the meaning set forth in Section 3.10(f).

“Made available” or “made available” means that the Company has posted, or caused to be posted, such information to the Data Room or actually delivered, or caused to actually be delivered, such information directly to Parent or its Representatives via e-mail or overnight delivery service, in each case no less than two Business Days prior to the date hereof.

“Material Contracts” has the meaning set forth in Section 3.6(a)(xvii).

“Material Customer” has the meaning set forth in Section 3.24(a).

“Material Supplier” has the meaning set forth in Section 3.24(b).

“Merger” has the meaning set forth in the preamble.

“Merger Consideration” means the Base Merger Consideration, plus (1) the Closing Cash, plus (2) the Closing Trailing Amount, plus (3) the Interest Factor, if any, less (4) the Closing Unpaid Indebtedness, less (5) the Closing Unpaid Transaction Expenses, plus or less (6) the Net Working Capital Adjustment.

“Merger Shares” means that number of shares of Parent Common Stock equal to (i) [REDACTED] of the Estimated Merger Consideration divided by (ii) the Stock Price.

“Merger Sub 1” has the meaning set forth in the preamble.

“Merger Sub 2” has the meaning set forth in the preamble.

“Merger Subs” has the meaning set forth in the preamble.

“Minimum Net Working Capital Amount” means [REDACTED]

“Minimum Subject Trackage Volume” has the meaning set forth in Section 7.2(h).

“Net Working Capital” means as of any date determination, which can be positive or negative, the sum of the PAR Net Working Capital and the PAS Net Working Capital calculated in accordance with the Closing Date Financial Principles and the example calculation as of June 30, 2020 set forth on Exhibit G attached hereto. Net Working Capital shall not include any Cash, Trailing Amount, Indebtedness or Unpaid Transaction Expenses.

“Net Working Capital Adjustment” means (a) if the aggregate PAR Net Working Capital plus the PAS Net Working Capital is less than the Minimum Net Working Capital Amount, a downward dollar-for-dollar adjustment in an amount equal to the difference between such aggregate PAR Net Working Capital plus the PAS Net Working Capital and the Minimum Net Working Capital Amount; or (b) if the

aggregate PAR Net Working Capital plus the PAS Net Working Capital is greater than the Minimum Net Working Capital Amount, an upward dollar-for-dollar adjustment in an amount equal to the difference between such aggregate PAR Net Working Capital plus the PAS Net Working Capital and the Minimum Net Working Capital Amount.

“Non-Qualified Investor” has the meaning set forth in Section 2.9.

“NS” means Norfolk Southern Railway Company.

[REDACTED]

[REDACTED]

[REDACTED]

“Open Source Materials” means all Software or other material that is distributed as “free software,” “open source software” or under a similar licensing or distribution model, including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), or any other license described by the Open Source Initiative as set forth on www.opensource.org.

“Order” has the meaning set forth in Section 7.1(b).

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business as conducted by the Company and the Acquired Entities consistent with past practices, except for adjustments and changes in business and operations occurring in response to the COVID-19 pandemic (i) as required pursuant to applicable Law or (ii) to the extent requested by a customer and the Company’s response to such request is commercially reasonable.

“Organizational Documents” has the meaning set forth in Section 3.1(a).

“Other Real Properties” has the meaning set forth in Section 3.9(a).

“Other Real Property Agreements” has the meaning set forth in Section 3.9(a).

“Owned Real Property” has the meaning set forth in Section 3.9(a).

“Pan Am Assignment” means the assignment of certain U.S. railway specific trademarks of PAWA to be entered into on the Closing Date between the Company and PAWA as set forth in Exhibit F attached hereto.

“Pan Am Marks” has the meaning set forth in Section 5.18(a).

“PAR” means Pan Am Railways, Inc.

“PAR Cash” means [REDACTED] of the Cash held by the Company and the Acquired Entities (other than PAS) as of any date of determination.

“PAR Net Working Capital” means [REDACTED] of the difference, as of immediately prior to Closing, between (a) the current assets (other than Cash and the Trailing Amount) of the Company and the Acquired Entities (other than PAS) (consisting of only those line items and related accounts and subaccounts and adjustments listed on Exhibit G), less (b) the current liabilities (other than Indebtedness and Unpaid Transaction Expenses) of the Company and the Acquired Entities (other than PAS) (consisting of only those line items and related accounts and subaccounts and adjustments listed on Exhibit G). An example of the calculation of PAR Net Working Capital, calculated as of June 30, 2020 for illustrative purposes, is set forth on Exhibit G attached hereto.

“PAR Unpaid Indebtedness” means [REDACTED] of the unpaid Indebtedness of the Company and the Acquired Entities (other than PAS) at any date of determination.

“Parent” has the meaning set forth in the Preamble.

“Parent Common Stock” means the common stock of Parent, par value [REDACTED]

“Parent Consent Party” has the meaning set forth in Section 5.1(b).

“Parent Indemnified Parties” has the meaning set forth in Section 9.2(b).

“Parent Material Adverse Effect” means any Event that has prevented or materially impaired or delayed, or that would reasonably be expected to prevent or materially impair or delay, the ability of Parent or Merger Subs to timely consummate the Contemplated Transactions or to timely perform their obligations under this Agreement.

“Parent Related Party” means Parent, each Acquired Entity, their Affiliates, and their respective officers, directors, managers, employees, agents, successors and assigns.

“Parent SEC Documents” has the meaning set forth in Section 4.7(a).

“Party” has the meaning set forth in the preamble.

“PAS” means Pan Am Southern LLC.

“PAS Cash” means [REDACTED] of the Cash held by PAS as of any date of determination.

“PAS Net Working Capital” means [REDACTED] of the difference, as of immediately prior to Closing, between (a) the current assets (other than Cash and the Trailing Amount) of PAS (consisting of only those line items and related accounts and subaccounts and adjustments listed on Exhibit G), less (b) the current liabilities (other than Indebtedness and Unpaid Transaction Expenses) of PAS (consisting of only those line items and related accounts and subaccounts and adjustments listed on Exhibit G). An example of the calculation of PAS Net Working Capital, calculated as of June 30, 2020 for illustrative purposes, is set forth on Exhibit G attached hereto.

“PAS Unpaid Indebtedness” means [REDACTED] of the unpaid Indebtedness of PAS as of any date of determination (except to the extent owed to the Company or any Acquired Entity) for the avoidance of

doubt any amounts owed by PAS to NS pursuant to the Hoosac Tunnel Loan shall be included within the scope of this definition, and not within the scope of the definition of “PAR Unpaid Indebtedness” (and therefore only [REDACTED] of such amounts under the Hoosac Tunnel Loan shall be taken into account in the definition of “Closing Unpaid Indebtedness”).

“PAS Trackage Rights Limitation” means the terms and conditions of Section 3(j) of the ST Joint Use Agreement.

“Paycheck Protection Program” means the program established under Division A, Title I of the CARES Act, as interpreted and applied by the SBA.

“PAWA” means Pan American World Airways, Inc.

“Payoff Letter” has the meaning set forth in Section 5.15.

“Perma Treat” means Perma Treat Corporation.

“Perma Treat Agreement” means an agreement between PAR and Perma Treat on the terms set forth in Exhibit E hereto to be negotiated after the date hereof and prior to the Closing Date and entered into on the Closing Date.

“Permitted Encumbrances” means (i) mechanics’, materialmen’s, carriers’, workmen’s, repairmen’s, warehousemen’s, contractors’ or other similar Encumbrances arising or incurred in the Ordinary Course of Business and for amounts which are incurred in the Ordinary Course of Business or by operation of law with respect to any amounts not yet delinquent or which are being contested in good faith by Actions and for which reserves have been established in accordance with GAAP, (ii) trackage rights agreements, interchange agreements, and similar operating agreements regarding use of rail lines as set forth on Schedule 1.1(d) or on any Schedule included under Section 3.9, (iii) Encumbrances for Taxes or other governmental charges or assessments not yet due and payable or that are being contested in good faith and for which an adequate reserve has been made in accordance with GAAP, (iv) Encumbrances affecting the interest of the grantor of any easements benefiting any Property which were not granted by or consented to by the Company and Acquired Entities, (v) Encumbrances, imperfections, minor defects or irregularities in title, easements, claims, liens, charges, security interests, rights-of-way, rights-of-refusal, covenants, restrictions, reversionary interests, and other, similar matters that would not, individually or in the aggregate, reasonably be expected to materially impair the continued use and operation of the Properties to which they relate in the business of the Company and the Acquired Entities as presently conducted, (vi) zoning, building and other similar codes and regulations, (vii) Encumbrances arising in the ordinary course of business under worker’s compensation unemployment insurance, social security, retirement and similar legislation, (viii) other statutory liens securing payments not yet due, (ix) purchase money liens and liens securing rental payments under capital lease arrangements, (x) Encumbrances, covenants, restrictions and other, similar matters set forth in any Authorizations referred to in Section 3.19, and (xi) any matters of public record in the applicable recorder’s office or that would be disclosed by a current, accurate survey and/or physical inspection of the Properties to which they relate, provided any such matters would not, individually or in the aggregate, reasonably be expected to materially impair the continued use and

operation of the Properties to which they relate in the business of the Company and the Acquired Entities as presently conducted.

“Person” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Authority.

“Post-Closing Tax Period” means any taxable period ending after the Closing Date.

“Post-Remediation OM&M” means any costs, actions or activities required for the operation, maintenance and monitoring of a constructed or implemented Remedial Action, and any Governmental Authority oversight costs related thereto, incurred after approval by the applicable Governmental Authorities of a certification of completion of the Remedial Action (or the equivalent thereof), sign signifying completion of the construction and implementation of the required Remedial Actions.

“PPP Loan” means any loan to the Company or any Acquired Entity pursuant to the Paycheck Protection Program.

“Pre-Closing Disposition” has the meaning set forth in Section 5.16.

“Pre-Closing Disposition Plan” means the step plan attached hereto as Exhibit K.

“Pre-Closing Taxes” means (i) any Taxes of the Company and the Acquired Entities with respect to any Pre-Closing Tax Period or with respect to the pre-Closing portion of any Straddle Period and (ii) all Taxes which would otherwise have been required to be paid in a Pre-Closing Tax Period but the payment of which was deferred pursuant to the CARES Act or any similar provision of state, local or non-U.S. Tax law. The portion of any Tax that is allocable to the pre-Closing portion of any Straddle Period shall be: (x) in the case of real property, personal property and similar ad valorem Taxes, deemed to be the amount of such Taxes for the entire taxable period multiplied by a fraction, the numerator of which is the number of calendar days in such period up to and including the Closing Date, and the denominator of which is the number of calendar days in the entire period; *provided*, however, that appropriate adjustment shall be made with respect to Taxes attributable to any property that was not owned for the entirety of the Straddle Period, and (y) in the case of all other Taxes, determined as though the taxable period terminated at the close of business on the Closing Date. For purposes of determining any Tax attributable to the pre-Closing portion of any Straddle Period in accordance with clause (y) of the preceding sentence, any extraordinary transaction outside the Ordinary Course of Business that occurs on the Closing Date but after the Closing shall be considered to occur on the day following the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or prior to the Closing Date.

“Properties” has the meaning set forth in Section 3.9(a).

“Purchase Price Escrow Account” has the meaning set forth in the Escrow Agreement.

“Purchase Price Escrow Amount” means [REDACTED]

“Purchase ROFR” means the right of first refusal with respect to the rail property subject to that certain Rail ROFR Agreement in the form attached hereto as Exhibit H.

“Qualified Investor” has the meaning set forth in Section 2.9.

[REDACTED]

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers or other receptacles containing Hazardous Substances).

“Releasees” has the meaning set forth in Section 5.14(a).

“Remedial Action” means any action that constitutes a “removal,” “remedial action” or “response” as defined by Section 101 of CERCLA, 42 U.S.C. §§ 9601(23), (24).

“Remedial Action Liabilities” means any past, current or future Liability under applicable Environmental Laws to undertake, perform, pay or contribute to payment of the costs of any Remedial Action, including any legally-imposed obligations to reimburse or pay any Governmental Authority for costs of oversight of such Remedial Actions and any Liability for any related enforcement actions.

“Remedial Action Settlements” has the meaning set forth in Section 9.3(f).

“Remediation Manager” means the person or entity engaged pursuant to Section 9.3(d).

“Representatives” means each of the respective attorneys, accountants, officers, employees and other authorized agents, advisors and representatives of Parent, Merger Subs, the Company or the Shareholder Representative.

“Resolution Period” has the meaning set forth in Section 2.8(b).

“Restricted Employees” has the meaning set forth in Section 5.10.

“SBA” means the U.S. Small Business Administration or any successor agency.

“SEC” means the United States Securities and Exchange Commission.

“Second Certificate of Merger” has the meaning set forth in Section 2.3.

“Second Merger” has the meaning set forth in the preamble.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Laws” means the Securities Act; the Securities Exchange Act of 1934, as amended; the Investment Company Act of 1940, as amended; the Investment Advisers Act of 1940, as

amended; the Trust Indenture Act of 1939, as amended; the rules and regulations of the SEC promulgated thereunder, and state securities or “blue sky” Laws.

“Share” has the meaning set forth in Section 2.6(a).

“Shareholder Representative” means Mr. Timothy Mellon.

“Shareholder Representative Expenses” has the meaning set forth in Section 9.1(b).

“Shareholders” means Timothy Mellon, Richard S. Kelso, D. Armstrong Fink, and William H. White.

“Shareholders Agreement” means the Amended and Restated Stockholders Agreement, dated as of May 2013, entered into between the Company and the Shareholders.

“Software” means any and all of the following: (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code; (ii) software databases and compilations, including any and all digital data and collections of data, whether machine readable or otherwise; (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, and menus; and (iv) all documentation, including user manuals and other training documentation, related to any of the foregoing.

[REDACTED]

[REDACTED]

“ST” means Springfield Terminal Railway Company.

[REDACTED]

[REDACTED]

“STB” means the Surface Transportation Board.

“STB Approval” means receipt of final STB approval or authorization of the Contemplated Transactions pursuant to 49 U.S.C. § 11323 et seq.

“Stock Adjustment” means if the Final Merger Consideration determined pursuant to Section 2.8(a) would otherwise result in the value of the Merger Shares being less than [REDACTED] of the value of the Final Merger Consideration, then the Final Cash Adjustment shall be reduced and a number of Merger Shares with a value (based on the Stock Price) equal to the amount of such reduction shall be delivered to the Shareholder Representative such that the value of the adjusted number of Merger Shares is equal to [REDACTED] of the value of the Final Merger Consideration. For the purposes of this definition, the “value of the Merger Shares” shall be calculated based on the Stock Price.

“Stock Price” means a price per Merger Share on the NASDAQ Global Market calculated based on the interval volume weighted average price on Bloomberg of the Parent Common Stock for the 20 trading days ending five Business Days prior to the Closing Date; *provided* that in no event will the Stock Price exceed [REDACTED] per share or be less than [REDACTED] per share.

“Straddle Period” means any taxable period that includes but does not end on the Closing Date.

“Subsidiary” shall mean, with respect to any Person, any corporation, entity or other organization, whether incorporated or unincorporated, of which (a) such first Person directly or indirectly owns or controls at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions, or (b) such first Person or another of its Subsidiaries is a general partner or managing member.

“Support Agreement” has the meaning set forth in the preamble.

“Surviving Corporation” has the meaning set forth in Section 2.1.

“Tax” means all U.S. or non-U.S., federal, state, provincial or local income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, escheat, customs, duties, real property, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding or other tax, of any kind whatsoever, together with any interest, penalties, or additions to tax relating thereto.

“Tax Return” means any return, declaration, report, claim for refund information statement, or other written statements or information filed or required to be filed with a Governmental Authority with respect to Taxes, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

“Termination Date” has the meaning set forth in Section 8.1(b).

“Third Party Claim” has the meaning set forth in Section 9.2(b).

“Trailing Amount” means the aggregate of (i) any portion of a grant for facilities or trackage improvements earned but not yet received by the Company and the Acquired Entities (other than PAS), (ii) any unreimbursed expenditure for infrastructure due from a third party to the Company or the Acquired Entities (other than PAS), and (iii) earned but not yet paid amounts due to the Company and the Acquired Entities (other than PAS) with respect to operating PAS, including a prorated portion of the year end bonus amount, in each case determined by the parties as of immediately prior to the Closing. The Trailing Amount shall be calculated in accordance with the example calculation as of June 30, 2020 set forth on Exhibit N attached hereto.

“Transfer Taxes” has the meaning set forth in Section 6.3.

[REDACTED]

“Unaudited Interim Financial Statements” has the meaning set forth in Section 3.5(a).

“Unpaid Transaction Expenses” means all costs, fees and expenses incurred by the Company or any of the Acquired Entities at or prior to the Effective Time, or in respect of any Contract or other arrangement entered into at or prior to the Effective Time, related to the Contemplated Transactions, and payable to a third party, whether payable prior to, at or after the Closing, including (i) the fees and disbursements payable to legal counsel or accountants or investment bankers or other consultants and advisors of the Company or any of the Acquired Entities that are payable in connection with the Contemplated Transactions; (ii) any bonus, transaction, change of control, severance, incentive, compensation, phantom stock, termination, retention or similar transaction-related payments to be paid by the Company or the Acquired Entities as a result of the Contemplated Transactions (other than any payments that become due under the Change in Control Agreements set forth on Schedule 3.13(h) as a result of the Contemplated Transactions); (iii) any employer-side employment Taxes on any amounts included as Unpaid Transaction Expenses; and (iv) with respect to the Pre-Closing Disposition, all carve-out costs, formation costs, capital costs, and all other similar costs associated with separating the Excluded Entities from the Company and the Acquired Entities payable by the Company or any of the Acquired Entities, in each case in this definition to the extent unpaid as of the Closing.

“USEPA” means the United States Environmental Protection Agency and any successor agency thereto.

“U.S. Trade Laws” shall mean all statutory and regulatory requirements of any jurisdiction in which a Person operates related to export controls, economic sanctions, trade embargoes, anti-money laundering laws, boycotts, imports, and stipulations governing supply chain security programs, including regulations administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of Commerce’s Bureau of Industry and Security, and the U.S. Department of State’s Directorate of Defense Trade Controls.

“Waived Payments” has the meaning set forth in Section 5.1(d)(i).

“Written Consent” has the meaning set forth in the preamble.

ARTICLE II THE MERGER; CLOSING

2.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL and the FBCA, at the Effective Time, the Company shall be merged with and into Merger Sub 1 with the Company surviving, and immediately thereafter the Company shall be merged with and into Merger Sub 2, with Merger Sub 2 surviving and the separate corporate existence of the Company shall thereupon cease. Merger Sub 2 shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the “Surviving Corporation”) and a wholly owned subsidiary of Parent, and the separate corporate existence of Merger Sub 2, with all of its rights, privileges, immunities, powers and franchises, shall continue unaffected by Merger, except as set forth in this Article II. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the property, rights, privileges, immunities, powers and franchises of the Company and Merger Sub 2 shall vest in Merger Sub 2 as the Surviving Corporation and all claims, obligations, debts, liabilities and duties of the Company and Merger Sub 2 shall become the claims, obligations, debts, liabilities and duties of the Merger Sub 2 as the Surviving Corporation. The Merger shall have the effects set forth in this Agreement and specified in the DGCL and FBCA.

2.2 Closing. Unless this Agreement shall have been terminated and the Contemplated Transactions shall have been abandoned pursuant to Article VIII, the closing of the Contemplated Transactions (the “Closing”) shall take place at 9:00 am ET at the offices of K&L Gates LLP, 1601 K Street, NW, Washington, DC within two (2) Business Days following the satisfaction or waiver of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to those conditions in fact being satisfied at Closing), or at such other place, date and time as the Company and Parent may agree in writing (the time and date on which the Closing occurs is hereinafter referred to as the “Closing Date”).

2.3 Effective Time. Subject to the provisions of this Agreement, at the Closing, (i) the Parent will cause the First Merger to be consummated by filing a certificate of merger (the “First Certificate of Merger”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the DGCL, (ii) the Company and Parent will cause the Second Merger to be consummated by filing a certificate of merger (the “Second Certificate of Merger”) and articles of merger (“Articles of Merger”), to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the DGCL and with the Secretary of State of the State of Florida in accordance with the FBCA, respectively. The Merger shall become effective at the time when the Second Certificate of Merger and Articles of Merger have been duly filed or at such later time as may be agreed by the Company and Parent in writing and specified in the Second Certificate of Merger and Articles of Merger (the effective time of the Merger being hereinafter referred to as the “Effective Time”).

2.4 Certificate of Incorporation; Bylaws.

(a) At the Effective Time, by virtue of the Merger, the certificate of incorporation of Merger Sub 2, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation, until thereafter amended or restated as provided therein and by applicable Law, in each case consistent with the obligations set forth in Section 5.3.

(b) At the Effective Time, by virtue of the Merger, and without any further action on the part of the Company and Merger Subs, the bylaws of Merger Sub 2 in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation (except that references therein to the name of Merger Sub 2 shall be replaced by references to the name of the Surviving Corporation), until thereafter amended or restated as provided therein, by the Certificate of Incorporation and by applicable Law, in each case consistent with the obligations set forth in Section 5.3.

2.5 Directors and Officers.

(a) The directors and officers of Merger Sub 2 at the Effective Time shall be the directors and officers of the Surviving Corporation at the Effective Time by virtue of the Merger, until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Certificate of Incorporation and the bylaws of the Surviving Corporation and applicable Law.

2.6 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Parent, Merger Subs or the holders of any shares:

(a) Merger Consideration. Except as otherwise agreed to in writing between the Shareholder Representative and Parent, each share of Company common stock (each such share, a “Share”) issued and outstanding immediately prior to the Effective Time shall be converted automatically into and shall thereafter represent the right to receive a portion of the Estimated Merger Consideration in accordance with the Allocation Statement, subject to adjustment pursuant to Section 2.8, subject to delivery of a duly executed letter of transmittal in the form of Exhibit L hereto (a “Letter of Transmittal”). At the Effective Time, all of the Shares shall no longer be outstanding, shall be cancelled and extinguished automatically and shall cease to exist, and each Shareholder will cease to have any rights with respect to such Shares, except for the right to receive the portion of the Estimated Merger Consideration to be paid in consideration therefor in accordance with this Article II, subject to adjustment pursuant to Section 2.8, subject to delivery of a duly executed Letter of Transmittal.

(b) Merger Sub. Each share of common stock, par value [REDACTED] per share, of Merger Sub 1, issued and outstanding immediately prior to the Effective Time, shall be converted into and become one share of common stock of the Surviving Corporation prior to the merger with and into Merger Sub 2, and at the effective time of such merger, shall be canceled and extinguished automatically and shall cease to exist. Each share of common stock, par value [REDACTED] per share, of Merger Sub 2, issued and outstanding immediately prior to the effective time of such merger, shall remain as a validly issued fully paid and non-assessable share of common stock, par value [REDACTED] per share, of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation immediately after the Effective Time.

2.7 Closing Obligations.

(a) Deliveries of the Company and Shareholder Representative.

(i) No later than the fifth (5th) Business Day prior to the Closing Date, the Company shall deliver to Parent the Estimated Closing Statement along with reasonable supporting details.

(ii) At the Closing, the Company or the Shareholder Representative shall deliver to Parent, or shall cause to be delivered to Parent:

(A) certificates representing the Shares, endorsed in blank and accompanied by executed transfer powers, each in a form reasonably satisfactory to Parent;

(B) the certificate required by Section 7.2(c);

(C) resignations of all of the members of the boards of directors or managers and all executive officers of the Company and the Acquired Entities in their capacity as such (not including any members of the board of directors or managers or any executive officers of PAS who are designees of NS), except as may otherwise be specified by Parent in writing, each in a form reasonably satisfactory to Parent;

(D) evidence reasonably satisfactory to Parent that any amounts to be paid in connection with Closing as set forth on the Estimated Closing Statement are being paid in connection with the Closing;

(E) an executed copy of the Escrow Agreement;

(F) an executed copy of the Pan Am Assignment;

(G) an executed copy of the Perma Treat Agreement;

(H) an executed copy of the Rail Property ROFR Agreement; and

(I) executed copies of the Letters of Transmittal.

(b) Deliveries of Parent.

(i) At Closing, Parent shall deliver or cause to be delivered to Shareholder Representative:

(A) to be shared among Shareholders in accordance with the Allocation Statement, the Estimated Merger Consideration by delivery of (1) the Merger Shares and (2) the Cash Merger Consideration, less the Deposit, the Purchase Price Escrow Amount and the Environmental Escrow Amount, by wire transfer of immediately available funds to the account(s) designated by the Shareholder Representative (and the Shareholder Representative shall cause the Deposit to be similarly shared among Shareholders);

(B) to the Escrow Agent, by delivery by wire transfer of immediately available funds to the accounts set forth in the Escrow Agreement, the Purchase Price Escrow Amount and the Environmental Escrow Amount;

(C) an executed copy of the Escrow Agreement;

(D) an executed copy of the Pan Am Assignment;

(E) an executed copy of the Perma Treat Agreement;

(F) an executed copy of the Rail Property ROFR Agreement;

(G) the certificate required by Section 7.3(c); and

(H) a copy of the decision issued by the STB evidencing STB Approval.

2.8 Final Cash Adjustment.

(a) Upon the earlier to occur of (i) the agreement of Parent and Shareholder Representative (or their deemed agreement) pursuant to Section 2.8(b) with respect to the calculation of the Final Merger Consideration and (ii) the delivery of any report of the Independent Accountant in accordance with Section 2.8(c) with respect to the Final Merger Consideration, as applicable:

(i) Parent shall pay in cash to Shareholder Representative to be shared among Shareholders in accordance with the Allocation Statement, the aggregate amount, if any, by which the Final Merger Consideration exceeds the Estimated Merger Consideration, subject to the Stock Adjustment (the “Consideration Surplus”); *provided* that in no event shall the Consideration Surplus be greater than the Purchase Price Escrow Amount; and

(ii) if the Estimated Merger Consideration exceeds the Final Merger Consideration (the “Consideration Deficiency”), then the Shareholder Representative and Parent shall deliver a joint written notice instructing the Escrow Agent to pay Parent the Consideration Deficiency from the Purchase Price Escrow Amount; *provided* that in no event shall the Consideration Deficiency be greater than the Purchase Price Escrow Amount.

(b) No later than ninety (90) days after the Closing Date, Parent shall deliver to the Shareholder Representative a statement in reasonable detail setting forth its determination as to (i) the Net Working Capital and the resulting Net Working Capital Adjustment, (ii) the Closing Cash, (iii) the Closing Unpaid Indebtedness, (iv) the Closing Unpaid Transaction Expenses, (v) the Trailing Amount, (vi) the Interest Factor (if any) and (vii) based on the foregoing calculations, its resulting calculation of the Final Cash Adjustment and the Merger Consideration (“Final Calculation Statement”). Shareholder Representative shall have thirty (30) days from receipt of the Final Calculation Statement, to give Parent written notice of its objection to any item or calculation contained in the Final Calculation Statement specifying in reasonable detail each disputed items, the amount thereof in dispute and the basis therefor (a “Dispute Notice”). Shareholder Representative may only deliver one Dispute Notice. If Shareholder Representative concurs with the Final Calculation Statement or otherwise does not give Parent a Dispute

Notice within such thirty (30) day period, such Final Calculation Statement shall be deemed final and conclusive with respect to the determination of the Final Cash Adjustment and the Merger Consideration, and shall be binding on the Parties for all purposes under this Agreement. If, however, Shareholder Representative delivers to Parent a Dispute Notice objecting to any items or calculations contained in the Final Calculation Statement within the applicable thirty (30) day period, Shareholder Representative and Parent shall, within thirty (30) days following the date of the Dispute Notice (the “Resolution Period”), attempt in good faith to resolve such objections, and any written resolution by them as to any disputed amount shall be deemed final and conclusive with respect to the determination of the Final Cash Adjustment and the Merger Consideration, and shall be binding on the Parties for all purposes under this Agreement. Parent shall, and shall cause its Affiliates (including the Surviving Corporation and the Acquired Entities) to, provide the Shareholder Representative with reasonable access (with the right to make copies), during normal business hours, to (A) the work papers of the Surviving Corporation and the Acquired Entities used to calculate the amounts set forth in the Final Calculation Statement, (B) the Surviving Corporation and the Acquired Entities’ and Parent’s accountants or any of its other representatives who participated in the preparation of the Final Calculation Statement and (C) such other books and records and other relevant information of the Surviving Corporation and the Acquired Entities used to calculate the amounts set forth in the Final Calculation Statement, and (D) Employees knowledgeable about the information used in, and the preparation of, the Final Calculation Statement.

(c) If Shareholder Representative and Parent are unable to resolve Shareholder Representative’s objections within the Resolution Period, then only those amounts and issues remaining in dispute and Parent’s responses thereto will be submitted by Parent and Shareholder Representative for review by the Independent Accountant. The Parties agree to execute, if requested by the Independent Accountant, a reasonable engagement letter with respect to any determination to be made by the Independent Accountant. The Independent Accountant will determine only those issues still in dispute at the end of the applicable Resolution Period and the Independent Accountant’s determination will be based upon and consistent with the terms and conditions of this Agreement. The determination by the Independent Accountant will be based solely on written submissions with respect to such disputed items by Parent and Shareholder Representative to the Independent Accountant and not on the Independent Accountant’s independent review. Each of Parent and Shareholder Representative will make its initial written submissions to the Independent Accountant no later than ten Business Days following submission of the dispute to the Independent Accountant, and each such Party will be entitled to respond to the initial submission of the other Party and any questions and requests of the Independent Accountant. Discovery shall be limited to documents submitted to the Independent Accountant by either party, or as otherwise requested by the Independent Accountant consistent with this Agreement. Parent and Shareholder Representative shall instruct the Independent Accountant to make its determination within thirty (30) days after its engagement (which engagement will be made by Parent and Shareholder Representative no later than five (5) Business Days after the end of the Resolution Period), or as soon thereafter as possible, and such determination will be set forth in a written statement delivered by the Independent Accountant to Parent and Shareholder Representative. The Final Calculation Statement, as finalized by the Independent Accountant, shall be deemed final and conclusive with respect to the Final Cash Adjustment and the Merger Consideration and shall be binding on Parent and the Shareholder Representative for all purposes under this Agreement. There shall not be any ex parte communications between any Party or its Representatives and the Independent Accounting Firm, and any submissions to the Independent Accounting Firm shall be in

writing and delivered simultaneous to each Party. In deciding any matter, the Independent Accountant (i) will be bound by the provisions of this Section 2.8, and (ii) may not assign a value to any item greater than the greatest value for such item claimed by either Parent or Shareholder Representative or less than the smallest value for such item claimed by Parent or Shareholder Representative. The fees and expenses of the Independent Accountant shall be allocated between Parent and the Shareholder Representative so that Shareholders' share of such fees and expenses shall be equal to the product of (x) and (y), where (x) is the aggregate amount of such fees and expenses, and (y) is a fraction, the numerator of which is the amount in dispute that is ultimately unsuccessfully disputed by Shareholder Representative (as determined by the Independent Accountant), and the denominator of which is the total amount in dispute that is resolved by the Independent Accountant. Parent shall be responsible for the remaining fees and expenses of the Independent Accountant. Except as provided in the preceding sentences, all other costs and expenses incurred by Parent and Shareholder Representative in connection with resolving any dispute hereunder before the Independent Accountant will be borne by the Party incurring such cost and expense. Absent fraud or manifest error, the procedures set forth in this Section 2.8 shall be the sole and exclusive method for resolving disputes with respect to the subject matter of this Section 2.8.

(d) In the event of (i) (A) a Consideration Surplus or (B) the Estimated Merger Consideration equals the Final Merger Consideration, then Parent and Shareholder Representative shall deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to promptly release all funds in the Purchase Price Escrow Account to the Shareholder Representative to be shared among Shareholders in accordance with the Allocation Statement, in accordance with the terms of the Escrow Agreement, and (ii) a Consideration Deficiency that is less than the Purchase Price Escrow Amount, then Parent and Shareholder Representative shall deliver a joint written instruction to the Escrow Agent instructing the Escrow Agent to promptly release any remaining funds in the Purchase Price Escrow Account, if any, after payment has been made to Parent in accordance with Section 2.8(a)(ii), to the Shareholder Representative to be shared among Shareholders in accordance with the Allocation Statement, in accordance with the terms of the Escrow Agreement.

2.9 Qualified and Non-Qualified Investors. Notwithstanding anything herein to the contrary, each Shareholder shall, at least 10 Business Days prior to the Closing Date, (i) provide a written certification to Parent (in the form provided by Parent) that such holder is an Accredited Investor, along with other evidence reasonably satisfactory to Parent that such holder is an Accredited Investor (including, at Parent's election, a letter from such holder's independent certified public accountant certifying that such holder is an Accredited Investor and a completed "accredited investor" questionnaire in a form provided by Parent) or (ii) if such holder is unable to provide the written certification referred to in clause (i), such holder shall provide a written certification to Parent that such holder is not an Accredited Investor (any such holder with respect to whom the Company or any of Acquired Entities have a current W-2 evidencing that such holder is an Accredited Investor or that has provided the written certification referred to in the foregoing clause (i), a "Qualified Investor", and any such holder with respect to whom the Company does not have such a W-2 and that has provided the written certification referred to in the foregoing clause (ii) (or has failed to provide any such written certification), a "Non-Qualified Investor"). For the avoidance of doubt, the intent of the Parties and this Agreement is that, (i) with respect to each Non-Qualified Investor, the number of Merger Shares to which such Non-Qualified Investor would otherwise be entitled in respect of the Merger Consideration shall be reduced to zero, (ii) the amount of cash to which such Non-Qualified Investor would otherwise be entitled in respect of the Cash Merger Consideration shall be increased by an amount equal to

the number of Merger Shares contemplated by the preceding clause (i) multiplied by the Stock Price, (iii) the number of Merger Shares that would otherwise be issued to the Non-Qualified Investor shall instead be issued to the Qualified Investors pro-rata in accordance with the Allocation Statement and (iv) the amount of cash to which the Qualified Investors would otherwise be entitled in respect of the Cash Merger Consideration shall be decreased by an amount equal to the number of Merger Shares contemplated by the preceding clause (iii) multiplied by the Stock Price.

2.10 Withholding Taxes. Notwithstanding any other provision of this Agreement, Parent, its Affiliates, the Company and the Acquired Entities shall be entitled to deduct and withhold from any amount otherwise payable to any Person pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of applicable Law. Amounts so withheld and paid over to the appropriate Governmental Authority shall be treated for all purposes of this Agreement as having been paid to the applicable Person in respect of which such deduction and withholding was made. If Parent determines that any such withholding will be required, Parent shall (i) notify the Company and the Shareholder Representative as promptly as reasonably practicable after making such determination and (ii) cooperate reasonably with the Company and the Shareholder Representative to reduce or eliminate such withholding; *provided* that if any Shareholder fails to deliver to Parent prior to the Closing a properly executed IRS Form W-9, Parent shall have no obligation to notify the Company or the Shareholder Representative of any determination that, with respect to such Shareholder, withholding under Section 1445 of the Code or U.S. federal backup withholding is required.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Subs, except as set forth in the corresponding section or subsection (or as otherwise expressly provided therein) of the Company Disclosure Schedules, as of the date hereof and as of the Closing Date, as follows:

3.1 Organization and Authority.

(a) The Company and the Acquired Entities (other than the Inactive Acquired Entities) are duly organized and validly existing and to the extent the concept is applicable, in good standing under the laws of their jurisdiction of organization, and the Company has all requisite entity power and authority to execute, deliver and perform its obligations under this Agreement and the Ancillary Documents to the extent a party thereto and to consummate the Contemplated Transactions, as applicable. The Inactive Acquired Entities have conducted no business or operations within the prior two years and have no assets or Liabilities. The Company and each Acquired Entity (other than the Inactive Acquired Entities) has the requisite entity power and authority to carry on its portion of the Business as currently conducted and to own, lease and operate its properties and assets in the manner in which its properties and assets are currently operated. All necessary entity action and other corporate proceedings required to be taken by the Company to authorize the execution, delivery and performance of this Agreement and the Ancillary Documents to the extent a party thereto and the consummation of the Contemplated Transactions, as applicable, have been duly taken or will be taken before execution of such documents or consummation of such Contemplated Transactions, as applicable. This Agreement has been, and the Ancillary Documents will be, duly executed

and delivered by the Company to the extent a party thereto, and, assuming the due execution by Parent and Merger Subs or other applicable counterparty of this Agreement and the Ancillary Documents, constitute the legal, valid and binding obligations of the Company, enforceable against it in accordance with their terms, except as such enforceability may be limited by Laws applicable to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar Laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies or by general principles of equity. True, complete and correct copies of the organizational documents ("Organizational Documents") of the Company and each Acquired Entity (other than the Inactive Acquired Entities), in each case, in full force and effect as of the date of this Agreement, have been previously made available by the Company to Parent. Neither the Company nor any of the Acquired Entities are in violation of any of the provisions of their respective Organizational Documents. The Company and each Acquired Entity (other than the Inactive Acquired Entities) is authorized or duly qualified or licensed to do business, and to the extent the concept is applicable, is in good standing in each jurisdiction outside of its jurisdiction of organization where the operation of the Business by it requires such qualification, except where the failure to be so duly qualified or licensed or authorized or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The Shareholders are not entitled to any appraisal rights resulting from the Contemplated Transactions pursuant to Organizational Documents of the Company.

3.2 Capitalization of the Company and the Acquired Entities.

(a) Schedule 3.2(a) contains a complete and accurate capitalization table of the Company and each of the Acquired Entities setting forth the authorized Equity Interests of each, name of each interest holder, the number and class of interests held by each interest holder and the total number of interests of each class that are outstanding. Other than the interests listed on such capitalization table, no interests of any class of securities are issued or outstanding by the Company or any of the Acquired Entities. All of the Equity Interests of the Company and each Acquired Entity have been duly authorized and validly issued, and are fully paid and nonassessable, have not been issued in violation of any preemptive or similar rights and were issued in compliance with the Organizational Documents and applicable securities Laws or exemptions therefrom. Except as set forth on Schedule 3.2(a), each Acquired Entity is a direct or indirect, wholly owned Subsidiary of the Company. PAS does not have any Subsidiaries or otherwise own any Equity Interests in any Person.

(b) Schedule 3.2(b) sets forth a list of all Contracts currently in effect in respect of subscriptions, options, warrants, calls, commitments, preemptive rights or other rights of any kind outstanding for the purchase of, or any securities convertible or exchangeable for, any Equity Interests of the Company and the Acquired Entities. Except as set forth in the Organizational Documents of the Company and the Acquired Entities, the Shareholders Agreement and except as imposed under applicable Law, there are no restrictions upon, or obligations with respect to, the voting or transfer of the Equity Interests of the Company and the Acquired Entities. Neither the Company nor any Acquired Entity has Liabilities or obligations to any prior holder of its Equity Interests or any prior holder of rights to acquire any of such Equity Interests pursuant to any Contract or otherwise, in each case with respect to the acquisition or ownership of such Equity Interests. Other than the Shareholders Agreement, neither the Company nor any of the Acquired Entities is party to any shareholders' agreement or other similar Contract

with any holder of Equity Interests of the Company or any of the Acquired Entities, nor does the Company have Knowledge of any such Contract among the holders of Equity Interests of the Company or any of the Acquired Entities.

(c) Other than with respect to the Excluded Entities or as set forth in Schedule 3.2(c), neither the Company nor any Acquired Entity has any ownership interests in any other Person.

3.3 No Conflict.

(a) Except for matters that have not resulted and would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect solely with respect to clauses (ii), (iii) or (iv) below, the execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Contemplated Transactions will not:

(i) violate or conflict with or result in any breach of any provision of the Organizational Documents;

(ii) assuming the receipt of STB Approval, violate any provision of Law to which the Company or any of the Acquired Entities or the conduct by them of the Business is subject or violate, result in a breach of or conflict with any provision of any Order applicable to the Company or any of the Acquired Entities or the conduct of the Business by them that would subject any of them to any penalty;

(iii) violate, breach or constitute a default (with or without notice or lapse of time or both) under or give rise to a right of termination, cancellation, modification, purchase or repurchase, option exercise, put or call, or acceleration of any right, remedy or obligation of the Company or any Acquired Entity or event that, with the giving of notice, the passage of time or otherwise, would constitute a default or give rise to such right), with respect to any Material Contract to which it is a party or by which the Company, or the property or asset of the Company, is bound; or

(iv) result (or, with the giving of notice, the passage of time or otherwise, would result) in the creation or imposition of any Encumbrance other than a Permitted Encumbrance on any of the assets of the Company or any Acquired Entity.

(b) Except for STB Approval, the execution, delivery and performance by the Company of this Agreement and the Ancillary Documents to the extent a party thereto, and the consummation by it of the Contemplated Transactions, do not require any consent, approval license, waiver, permit, from, registration, declaration or other filing with or approval or authorization of any Governmental Authority by or with respect to the Company or any of the Acquired Entities, except for the filing of the First Certificate of Merger, the Second Certificate of Merger and the Articles of Merger as required by applicable Law. The aggregate fair market value of any of the Company or the Acquired Entities which are non-rail carriers governed by the STB is less than [REDACTED]

(c) Except as set forth on Schedule 3.3(c), there are no rights of first refusal, rights of first offer or similar rights of any Person that would be applicable to any of the Contemplated Transactions or the execution, delivery or performance by the Company under this Agreement.

3.4 Absence of Certain Changes or Events.

(a) Except as set forth on Schedule 3.4(a), since December 31, 2019 through the date hereof, (i) the Company and the Acquired Entities have operated the Business in the Ordinary Course of Business, (ii) there has been no Company Material Adverse Effect and (iii) neither the Company nor any of the Acquired Entities has taken any action that if taken after the date hereof would constitute a violation of Sections 5.1(b)(iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xii), (xiii), (xiv), (xvi), (xviii), (xix), (xx), (xxii) or (xxviii).

3.5 Financial Statements.

(a) The (i) (A) audited consolidated balance sheets and the related combined statements of income, comprehensive income and stockholder's equity/noncontrolling interest and combined statements of cash flows of PAR at December 31, 2017, 2018 and 2019 and for the years then ended, including the footnotes thereto and (B) audited balance sheets and the related statements of income and members' capital and statements of cash flows of PAS at December 31, 2018 and 2019 and for the years then ended, including the footnotes thereto (together, the "Audited Financial Statements"), and (ii) (A) the unaudited, balance sheets and related income statements and statements of cash flows of PAR as of June 30, 2020 and for the six-month period then ended, and (B) the unaudited, balance sheets and income statements and statements of cash flows of PAS as of June 30, 2020 and for the six-month period then ended (together, the "Unaudited Interim Financial Statements," and together with the Audited Financial Statements, the "Financial Statements"), have been made available to Parent by the Company. The Financial Statements are based on the books and records of PAR or PAS, as applicable, and fairly present in all material respects the financial position and results of operations of PAR or PAS, as applicable, and their respective Subsidiaries as of the date or for the periods indicated therein, in accordance with GAAP, except as noted therein. No auditor has or has stated in writing an intention to withdraw its audit opinion with respect to any Audited Financial Statements and the Company has not determined that it must or that it will restate any Financial Statements.

(b) The Company maintains internal controls over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, including policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company and Acquired Entities, (ii) are designed to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company and Acquired Entities are being made in accordance with applicable policies, and (iii) are designed to provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and the Acquired Entities.

3.6 Contracts and Commitments.

(a) Schedule 3.6(a) sets forth as of the date hereof, a true, complete and correct list of each Contract to which the Company or an Acquired Entity is a party or by which the Company or an Acquired Entity or any of its properties or assets is bound or which the Company or any Acquired Entity uses, that is a:

- (i) material Contract that relates to the Properties;
- (ii) Contract (A) with any Governmental Authority, (B) with NS or any of its Affiliates or (C) under which NS or any of its Affiliates is a third-party beneficiary;
- (iii) bonus, pension, profit sharing, retirement or other form of deferred compensation plan;
- (iv) contract for the employment of any officer, individual Employee or other person on a full-time or consulting basis providing for base compensation in excess of [REDACTED] per year;
- (v) Contract as obligor, guarantor or lender relating to Indebtedness or any lien (other than Permitted Liens) that obligates the Company or any of the Acquired Entities to make any capital contribution;
- (vi) Contract that relates to Indebtedness or Guaranty involving an outstanding principal amount more than [REDACTED];
- (vii) any outstanding settlement offers or other such similar arrangements involving an amount in excess of [REDACTED];
- (viii) a Contract that contains (A) a “most favored nation” provision or other preferred pricing or similar rights, to a customer, supplier, sales representative, distributor or any other Person, or (B) contains any minimum purchase or sale obligation (including take-or-pay Contracts);
- (ix) lease or sublease agreement under which it is lessee of, or holds or operates any personal property owned by any other party, for which the annual rental exceeds [REDACTED], individually, or [REDACTED] over the life of the lease;
- (x) lease or sublease agreement under which it is lessor of or permits any third party to hold or operate any of its personal property, for which the annual rental exceeds [REDACTED] individually, or [REDACTED] over the life of the lease;
- (xi) Contract or group of related Contracts with the same party (other than standard purchase orders or pricing agreements or programs) for the purchase by the Company or any Acquired Entity of products or services which provided for annual payments in excess

of [REDACTED] during the trailing twelve (12)-month period ending on the date of the Unaudited Interim Financial Statements;

(xii) Contract or group of related Contracts with a customer (other than standard purchase orders or pricing agreements or programs issued in the Ordinary Course of Business) that provided for annual revenues (based on the trailing twelve (12)-month period ending on the date of the Unaudited Interim Financial Statements to the Company or any Acquired Entity in excess of [REDACTED]

(xiii) partnership, joint venture, revenue pooling, interline or other similar Contract;

(xiv) Contract made outside the Ordinary Course of Business that is material to the Company or any of the Acquired Entities;

(xv) Contract that was entered into by the Company or any Acquired Entity since January 1, 2017, or has not yet been consummated, and involves the acquisition or disposition, directly or indirectly (whether by mergers, sale of stock or sale of assets) of a business or capital stock or other equity interest of another Person;

(xvi) a PPP Loan; or

(xvii) Contract which (A) materially prohibits the Company or any Acquired Entity from freely engaging in business anywhere in the world, (B) contains any restrictions pursuant to "paper barriers" (as such term is generally understood in the railroad industry) that are applicable to the Company and the Acquired Entities, or (C) contains any provision or covenant limiting in any material respect the ability of the Company or any of the Acquired Entities to compete with or obtain products or services from any Person or limiting the ability of any Person to provide products or services to the Company or any of the Acquired Entities (the contracts of the type covered in clauses (i) through (xvii), the "Material Contracts").

(b) The Company has made available to Parent true, correct and complete copies of all Material Contracts.

(c) (i) Each Material Contract is valid and binding on the Company or the applicable Acquired Entity and in full force and effect and, to the Knowledge of the Company, is valid and binding on the other parties thereto; and (ii) the Company and each Acquired Entity has, and to its Knowledge, each counterparty thereto has, performed in all material respects all obligations required to be performed by it (or them) to date under each Material Contract, and neither the Company, nor any of Acquired Entities, nor to the Company's Knowledge any counterparty, has violated any provision of, or taken or failed to take any act which, with or without notice, lapse of time, or both, would constitute a material default under the provisions of such Material Contract, and neither the Company nor any of its Subsidiaries has received notice that it has breached, violated or defaulted under any Material Contract. For purposes of this Section 3.6(c), when the representations and warranties contained herein are made at the Closing, the references to "Material Contract" shall include any Contract entered into after the date hereof that would have constituted a Material Contract if in effect on the date hereof.

3.7 Absence of Undisclosed Liabilities. Neither the Company nor any Acquired Entity has any material Liabilities, except (i) expenses incurred in connection with the Contemplated Transactions, (ii) as specifically disclosed or reserved against in the Unaudited Interim Financial Statements or set forth on Schedule 3.7, and (iii) for Liabilities incurred in the Ordinary Course of Business since June 30, 2020.

3.8 Brokers and Other Advisors. Except for BMO Capital Markets Corp., no agent, broker, investment banker, finder, intermediary financial advisor or other Person is or will be entitled to any broker's, finder's fee or financial advisory fee or any other similar commission or fee from the Company or any Acquired Entity in connection with the consummation of the Contemplated Transactions.

3.9 Real Property.

(a) Neither the Company nor any Acquired Entity owns any real property, that is either material in value or necessary for the conduct by the Company and the Acquired Entities of any material portion of their operations, except as set forth on Schedule 3.9(a). Neither the Company nor any Acquired Entity is a party to any agreement concerning ownership, the use or occupancy of any other real property ("Other Real Property Agreements", which term shall include without limitations title insurance policies, surveys, property reports and construction contracts) that is either material in value or necessary for the conduct by the Company and the Acquired Entities of any material portion of their operations, except as set forth on Schedule 3.9(a). Schedule 3.9(a) sets forth all such material real property that is owned by the Company or any Acquired Entity ("Owned Real Property"), and the Company or such Acquired Entity has good and valid title to all such Owned Real Property, free and clear of all Encumbrances other than Permitted Encumbrances. Schedule 3.9(a) sets forth all such material real property otherwise used or occupied by the Company or any Acquired Entity in connection with the Business (the "Other Real Properties", and together with the Owned Real Properties, the "Properties") and identifies each related Real Property Agreement and all amendments thereto. True, correct and complete copies of the Other Real Property Agreements, including all amendments thereto, have been made available to Parent prior to the date hereof. Except as set forth on Schedule 3.9(a), the Company and each Acquired Entity, as the case may be, has a valid, binding and enforceable interest under the Other Real Property Agreements as provided therein, free and clear of any Encumbrances, except Permitted Encumbrances, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(b) (i) Neither the Company nor any Acquired Entity has received or given any written notice of any default under any Other Real Property Agreement, (ii) to the Company's Knowledge, no Event has occurred that with notice or lapse of time, or both, would constitute a default under any Other Real Property Agreement, (iii) no construction, alteration, decoration or other work due to be performed by any counterparty pursuant to any Other Real Property Agreement remains to be performed thereunder and all construction allowances or other sums to be paid to the Company or any Acquired Entity for work performed by or at the request of any of them at any of the Other Real Properties have been paid in full, and (iv) except as set forth on Schedule 3.9(b), none of the Company or any Acquired Entity, within twelve (12) months of the date hereof, has given notice to any landlord under any Other Real Property Agreement indicating that any of them will or will not be exercising any extension or renewal options.

(c) Except for the Purchase ROFR and otherwise as set forth on Schedule 3.9(c), none of the Company or any Acquired Entities has granted or entered into any sublease, license, option, right of first refusal or other contractual right or similar agreement to purchase, assign or dispose of the Properties or to allow or grant to any third party the right to use or occupy the Properties.

(d) The Company and the Acquired Entities, as applicable, have all material Authorizations, which are listed on Schedule 3.9(d), required under applicable Law for the current use and operation of the Business from the Properties, and have complied in all material respects with all conditions of the Authorizations applicable to it, except where failure to have any such Authorization or comply therewith would not have a Company Material Adverse Effect. No material default or violation, or Event that with the lapse of time or giving of notice or both would become a material default or violation, has occurred in the due observance of any Authorization, except where any such default or failure that would not give rise to a Company Material Adverse Effect.

(e) Except as set forth on Schedule 3.9(e), there does not exist any actual, or to the Knowledge of the Company, threatened in writing condemnation or eminent domain proceedings that affect any of the Properties.

(f) Neither the Company nor any Acquired Entities have owned, leased or operated any real property or facility that is currently, or was formerly, owned, leased or operated by Perma Treat.

3.10 Intellectual Property.

(a) Schedule 3.10(a) sets forth a true, correct and complete list of all Intellectual Property registrations (including patent, copyright, trademark and service mark) that have been issued to the Company or any Acquired Entity (that have not been abandoned in the ordinary course of business) and identifies each pending application for registration that the Company or any Acquired Entity has made with respect to any of its Intellectual Property, specifying as to each such item, as applicable, the (i) owner, (ii) jurisdiction, (iii) application or registration number and (iv) application or registration date. Schedule 3.10(a) also identifies any domain name registrations owned or used by the Company or any Acquired Entity in the operation of the Business. Schedule 3.10(b) identifies all material Software owned by or developed by or on behalf of the Company or any Acquired Entity. With respect to each item of Intellectual Property required to be identified on Schedule 3.10(a), and except as expressly set forth on Schedule 3.10(a), to the Company's Knowledge, all such Intellectual Property is subsisting, valid and enforceable.

(b) The Entity Intellectual Property constitutes all Intellectual Property used or held for use in, or otherwise necessary for, the conduct and operations of the Business as currently conducted.

(c) The Company or an Acquired Entity solely and exclusively owns all right, title and interest in and to the Entity Owned Intellectual Property, free and clear of any Encumbrances, except Permitted Encumbrances and (ii) has the valid and enforceable right to use each item of Entity Licensed Intellectual Property in connection with the conduct of the Business as currently conducted. The consummation of the transactions contemplated by this Agreement will not alter, encumber, impair or

extinguish any Entity Owned Intellectual Property or, to the Company's Knowledge, the Company's rights in any Entity Licensed Intellectual Property.

(d) No Action is pending or, to the Company's Knowledge, is threatened that (i) challenges the legality, validity, enforceability, use or ownership of any Entity Owned Intellectual Property or (ii) alleging that the conduct of the Business by the Company and/or the Acquired Entities infringes, misappropriates or otherwise violates the Intellectual Property of any Person.

(e) Except as set forth on Schedule 3.10(e), neither the conduct of the Business as presently conducted by the Company or any Acquired Entity, nor their use of any Entity Owned Intellectual Property, is infringing upon, misappropriating or otherwise violating the rights of any Person. To the Knowledge of the Company, no Person is infringing on, misappropriating or otherwise violating any right of the Company or any Acquired Entity with respect to any of its Intellectual Property.

(f) Set forth on Schedule 3.10(f) is a true, correct and complete list of all licenses, agreements, covenants not to sue or be sued, authorizations and permissions pursuant to which the Company or any Acquired Entity (i) uses any one or more items of Intellectual Property or IT Assets owned by a third party in connection with the Business, other than Software that is generally commercially available on non-discriminatory pricing terms with annual payments of less than [REDACTED] or (ii) grants a license, right to use or covenant not to be sued under any Intellectual Property or IT Assets to a third party (other than any non-exclusive licenses granted to customers in the ordinary course of business) (each item of (i) and (ii), collectively, the "Licensed IP Agreements"). The Company has made available to Buyer correct and complete copies of each of the Licensed IP Agreements. To the Company's Knowledge with respect to the Company and each applicable Acquired Entity party thereto, and each other counterparty thereto, each of the Licensed IP Agreements is legal, valid, binding, enforceable, and in full force and effect. Neither the Company nor any Acquired Entity is in breach of any of the Licensed IP Agreements, and, to the Company's Knowledge, no other party to any of the Licensed IP Agreements is in breach thereof. Neither the Company nor any Acquired Entity has granted any sublicense with respect to any rights in-licensed under a Licensed IP Agreement. Neither the Company nor any Acquired Entity has received any written notice that the other party to any Licensed IP Agreement intends to cancel, terminate or refuse to renew the same or to exercise or decline to exercise any option or right thereunder.

(g) The Company and each Acquired Entity have taken commercially reasonable measures to protect the proprietary nature of each item of Entity Owned Intellectual Property, including maintaining the confidentiality of all such Intellectual Property, the value of which is contingent upon maintaining the confidentiality thereof. All past and current employees and independent contractors of the Company and the Acquired Entities who have participated or are currently participating in creating any material Intellectual Property for the Company and/or any Acquired Entity have executed invention assignment agreements with the Company or an Acquired Entity, as applicable, whereby such employees and independent contractors presently assign to the Company or an Acquired Entity all right, title and interest they may have in any such Intellectual Property.

(h) Neither the Company nor any Acquired Entity (nor their respective employees or contractors) has incorporated, or otherwise utilized, any Open Source Materials in the creation of any Software that would result in such Software being covered by the General Public License or a similar "viral"

open source licensing regime, which General Public License or other regime would require such Software to be generally made available to the public.

(i) The Entity IT Assets operate and perform in a manner that permits the Company and the Acquired Entities to conduct the Business as currently conducted. The Company and the Acquired Entities have taken commercially reasonable measures, to protect the confidentiality, integrity and security of the Entity IT Assets (and all information and transactions stored or contained therein or transmitted thereby) against any unauthorized use, access, interruption, modification or corruption, including the implementation and periodic testing of (i) data backup, (ii) disaster avoidance and recovery procedures, (iii) business continuity procedures and (iv) encryption and other security protocol technology. To the Company's knowledge, there has been no unauthorized use, access, interruption, modification or corruption of any Entity IT Assets (or any information or transactions stored or contained therein or transmitted thereby).

(j) The Company and the Acquired Entities have complied, and are currently in compliance, in all material respects with all applicable Laws, rules, contractual obligations, policies, and procedures relating to (i) the privacy of the users of the products, services and websites of the Business and/or (ii) the collection, use, storage, processing and disclosure of any personally-identifiable information and other confidential data or information collected or stored by or on behalf of the Business. No claims or actions have been asserted or threatened against the Company or any Acquired Entity by any Person alleging a violation of such Person's privacy, personal or confidentiality rights under any Laws, rules, policies or procedures.

3.11 Transactions with Affiliates. Except pursuant to written Contracts set forth on Schedule 3.11(a), including the Purchase ROFR, or as otherwise set forth in such schedule, and except for any distributions, salaries, bonuses or business expense reimbursement payments (or advances) and other similar payments made or payable in the Ordinary Course of Business and reflected in the Company's or any Acquired Entity's books and records, there are no Contracts with, outstanding amounts payable to or receivable from, or outstanding advances by the Company or any Acquired Entity to any of Shareholders, or to any director, manager, partner or officer of the Company or any Acquired Entity. There are no Contracts between the Company or any of the Acquired Entities, on the one hand, and any of the Shareholders or the Excluded Entities, on the other hand, except for Contracts set forth on Schedule 3.11(b), and as of the Closing Date, after giving effect to the Pre-Closing Disposition there will be no such Contracts, other than the Pan Am Assignment and the Perma Treat Agreement. Neither the Shareholders nor the Excluded Entities directly or indirectly (other than the Shareholders through their ownership of the Shares) owns, or otherwise has any right, title or interest in, to or under, any material property or right, tangible or intangible, that is used by the Company or any of the Acquired Entities. Neither the Company nor any of the Acquired Entities has owned or operated any of the businesses currently owned or operated by any of the Excluded Entities. There are no Contracts between the Company or any of the Acquired Entities (other than PAS), on the one hand, and PAS, on the other hand, except for Contracts set forth on Schedule 3.11(c).

3.12 Litigation and Orders.

(a) Litigation. Except as set forth on Schedule 3.12(a)(x) there are no Actions that are, or were at any time during the past three (3) years, pending (or to the Company's Knowledge threatened in

writing or orally) against the Company or any Acquired Entity or any of their respective properties or assets or any of their respect officers or directors in their capacity as such (i) by [REDACTED] or (ii) in which the amount in issue is or was greater than [REDACTED]. Except as set forth on Schedule 3.12(a)(y), to the Company’s Knowledge, there are no, and have not been in the past year any, disputes or other disagreements between the Company or any Acquired Entity, on the one hand, and [REDACTED] on the other hand. Except as set forth on Schedule 3.12(a)(z), there has been no written correspondence in the past year between the Company or any Acquired Entity, on the one hand, and [REDACTED], on the other hand, outside of the Ordinary Course of Business.

(b) Orders. Except as set forth on Schedule 3.12(a), there is no Order binding upon the Company or any Acquired Entity, nor has there been any such Order at any time during the past three (3) years that would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor any Acquired Entity is in breach or default (with or without notice or lapse of time, or both), and at no time during the past three (3) years has been a breach or default, under any such Order, which in either event would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

3.13 Employee Benefit Plans.

(a) Except as set forth on Schedule 3.13(a), neither the Company, any Acquired Entity nor any ERISA Affiliate thereof (nor any predecessor of any such entity), sponsors, maintains, contributes to (or has any obligation to contribute to), or has in the past six years or has in the past six years sponsored, maintained, administered or contributed to (or had any obligation to contribute to), or has or is reasonably expected to have any Liability with respect to, any Employee Benefit Plan that is, or has been, (i) a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA, (ii) subject to Title IV of ERISA or Section 412 of the Code, (iii) maintained by more than one employer within the meaning of Section 413(c) of the Code, (iv) subject to Sections 4063 or 4064 of ERISA or (v) a “multiple employer welfare arrangement” as defined in Section 3(40) of ERISA.

(b) Schedule 3.13(b) sets forth a list of each Employee Benefit Plan. The Company has made available to Parent, with respect to each Employee Benefit Plan, to the extent applicable, complete and correct copies of (i) each plan document, including any amendments thereto (or, in the case of any unwritten Employee Benefit Plan, a written summary of the terms of such Employee Benefit Plan), (ii) the most recent summary plan description, (iii) the trust agreement and any insurance documents, and (iv) the two most recent Form 5500 Annual Reports and accompanying schedules and attachments thereto, and all current employee handbooks, manuals and policies. Neither the Company nor any Acquired Entity has announced or otherwise made a commitment to implement any arrangement that, if implemented, would be an Employee Benefit Plan.

(c) Each Employee Benefit Plan has been maintained, funded, operated and administered in all material respects in accordance with the terms of such Employee Benefit Plan and applicable Law, including ERISA and the Code. All premiums, contributions or payments required to be made to each Employee Benefit Plan that have been timely made, pursuant to its terms and provisions and applicable Law. The Company and the Acquired Entities complied in all material respects with the Patient Protection and Affordable Care Act (the “Affordable Care Act”) and no event has occurred, and no

condition or circumstance exists, that would reasonably be expected to subject any of the Company and the Acquired Entities to material Liability, penalties, or Taxes under Sections 4980B, 4980D, 4980H, 6721 or 6722 of the Code or any other provision of the Affordable Care Act.

(d) Neither the Company, any Acquired Entity nor, to the Company's Knowledge, any director, manager, partner, officer, Employee of the Company or any Acquired Entity or other Person who participates in the operation of any Employee Benefit Plan has engaged in any transaction with respect to any Employee Benefit Plan, or breached any applicable fiduciary responsibility or obligation under Title I of ERISA that would subject any of them to a penalty or Liability under Section 502(i) or Section 502(l) of ERISA or Section 4975 of the Code.

(e) There are no Actions or claims pending or, to the Knowledge of the Company, threatened in writing against or with respect to any Employee Benefit Plan or the assets of any Employee Benefit Plan (other than routine claims for benefits and appeals of denied claims), and no civil or criminal Action brought pursuant to the provisions of Title I, Subtitle B, Part 5 of ERISA is pending, or to the Knowledge of the Company, threatened in writing against the Company or any Acquired Entity or, to the Knowledge of the Company, any fiduciary of any Employee Benefit Plan with respect to any such Employee Benefit Plan. Neither the Company nor any Acquired Entity has received written notice that any Employee Benefit Plan or any fiduciary thereof is presently the direct or indirect subject of any Action by any Governmental Authority, and to the Knowledge of the Company, no such Action has been threatened in writing. No Employee Benefit Plan has, within the three years prior to the date hereof, been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, or similar program sponsored by any Governmental Authority.

(f) Schedule 3.13(f) separately identifies each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code. Each such Employee Benefit Plan and each trust established in connection with each such Employee Benefit Plan (i) is the subject of a favorable determination letter issued by the Internal Revenue Service or (ii) was established by adoption of a prototype or volume submitter plan that is the subject of a favorable opinion letter issued by the Internal Revenue Service upon which the Company or the applicable Acquired Entity is permitted to rely. Since the date of each such determination or opinion letter, no Event has occurred that has resulted or is reasonably likely to result in the revocation of any such determination letter or the inability of the Company or the applicable Acquired Entity to rely on any such opinion letter or that is reasonably likely to adversely affect the qualified status of such Employee Benefit Plan or the exempt status of any such trust. The Company has made available to Buyer a true and complete copy of each such determination or opinion letter.

(g) Neither the Company nor any Acquired Entity has incurred any current or projected Liability in respect to post-employment or retiree health, life insurance and/or other welfare benefits, and neither the Company nor any Acquired Entity has any obligation to provide any such benefits to any retired or former employees or active employees of such Entity following such employee's retirement or termination of service, except in each case, (i) as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, codified as Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code, or any similar applicable Law, (ii) coverage through the end of the month of retirement or other termination of employment or service, (iii) disability benefits attributable to disabilities occurring at or prior

to retirement or other termination of employment or service, (iv) death benefits attributable to deaths occurring at or prior to retirement or other termination of employment or service and (v) conversion rights at the sole expense of the converting individual.

(h) Except as set forth on Schedule 3.13(h), neither the execution of this Agreement nor consummation of any of the Contemplated Transactions will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, manager, partner, officer, employee, independent contractor or consultant of the Company or any Acquired Entity to any payment or benefit, including any bonus, retention, severance, retirement or job security payment or benefit or any other compensation; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (iii) limit or restrict the right of the Company or any Acquired Entity to merge, amend or terminate any Employee Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Employee Benefit Plan; or (v) require a “gross-up” to any “disqualified individual” within the meaning of Section 280G(c) of the Code. Except as set forth on Schedule 3.13(h), no amount that could be payable in connection with the execution of this Agreement, any of the other Transaction Documents or the transactions contemplated hereby or thereby (either alone or in combination with any other event) by the Company or an Acquired Entity or otherwise could, individually or reasonably be expected to with any other such payment, constitute an “excess parachute payment” within the meaning of Section 280G of the Code or not be deductible pursuant to Section 280G of the Code or could be subject to an excise tax under Section 4999 of the Code.

(i) Neither the Company nor Acquired Entity has any obligation to gross-up, indemnify or otherwise reimburse any current or former Employee for any Tax incurred by such Employee, including under Section 409A or 4999 of the Code.

3.14 Workforce

(a) (i) Schedule 3.14(a)(i) sets forth, as of the date hereof, for each Employee, such Employee’s name, employer, title, hire date, location, whether full- or part-time, whether active or on leave (and, if on leave, the nature of the leave and the expected return date), whether exempt from the Fair Labor Standards Act, annual salary or wage rate, most recent annual bonus received and current annual bonus opportunity and (ii) except as set forth on such Schedule, all Employees are employed on an at-will basis by the Company or the applicable Acquired Entity or Entities and may be terminated at any time with or without cause, and without any severance or other Liabilities to any Entity, subject to obligations, if any, arising under applicable Laws or Employee Benefit Plans.

(b) Except as set forth on Schedule 3.14(b), neither the Company nor any Acquired Entity has been or is a party to or bound by any collective bargaining agreement. During the three (3)-year period ending on the date of this Agreement, neither the Company nor any Acquired Entity has experienced, nor is there pending, nor to the Knowledge of the Company, is there threatened in writing, any strike, slowdown, picketing, grievance process, work stoppage, concerted refusal to work overtime, claim of unfair labor practice or other labor dispute affecting the Company or any Acquired Entity.

(c) Except as set forth on Schedule 3.14(c), no material action has been commenced against the Company or any Acquired Entity during the three (3)-year period ending on the date hereof alleging any material breach of any applicable Laws and Orders with respect to labor or employment.

(d) During the three (3)-year period ending on the date hereof, neither the Company nor any Acquired Entity has initiated any plant or facility closing or mass layoff which would trigger any obligations under the WARN Act or any similar state law requiring advanced notice of layoff or facility closing.

(e) During the past three years, there has not been any Action related to, or any material act or material allegation to the Company's Knowledge of or relating to, sex-based discrimination, sexual harassment or sexual misconduct or to the Company's Knowledge, any material breach of any policy of the Company or any of the Acquired Entities relating to the foregoing, in each case, involving the Company or any of the Acquired Entities, or any current or former Employees, nor has there been any settlements or similar out-of-court or pre-litigation arrangements relating to any such matters, nor to the Company's Knowledge has any such Action been threatened in writing.

3.15 Compliance with Laws. Except as set forth on Schedule 3.15, the Company and the Acquired Entities are and in the past three (3) years have been in compliance in all material respects with all Laws applicable to the conduct of the Business. Except as set forth on Schedule 3.15, in the past three (3) years have there have been no written claims have been filed, nor, to the Company's Knowledge, have any been threatened, against the Company or any Acquired Entity by any Governmental Authority, the substance of which has not been resolved, regarding any actual or potential material violation of, or failure to materially comply with, any Law.

3.16 Authorizations. Except as set forth on Schedule 3.16, (i) the Company and Acquired Entities have all of the Authorizations that are required to carry on the Business as presently conducted by them, and each are qualified to hold such Authorizations; (ii) the Company and the Acquired Entities have during the past (3) three years complied with all material requirements in connection with such Authorizations; and (iii) such Authorizations are in full force and effect and, to the Knowledge of the Company, no suspension or cancellation of any of them has been threatened, except in the case of each of the foregoing that are not material to the Business, taken as a whole. Neither the Company nor any Acquired Entity has committed any violation of Law or other act or omission which could give rise to an action by a Governmental Authority to revoke, suspend, amend, limit, terminate or deny original issuance or renewal of any Authorizations, except in the case of the foregoing that are not material to the Business, taken as a whole.

3.17 Taxes. Except as set forth on Section 3.17 of the Disclosure Schedules:

(a) The Company and each Acquired Entity has timely filed, subject to permitted extensions, all Tax Returns that it was required to file. All such Tax Returns were true, accurate and complete in all material respects. All material Taxes owed by the Company or any Acquired Entity (whether or not shown or required to be shown on any Tax Return) have been paid. There are not any outstanding written claims by any taxing authority in a jurisdiction where the Company or any Acquired Entity does

not file Tax Returns that the Company or any Acquired Entity is or may be subject to taxation by that jurisdiction.

(b) The Company and each Acquired Entity is in compliance with all applicable information reporting and Tax withholding requirements under applicable Tax Laws.

(c) No audits, examinations, investigations, suits or other proceedings are currently ongoing, pending or threatened with regard to any Taxes or Tax Returns of the Company or any Acquired Entity. No Governmental Authority has asserted any deficiency, adjustment or claim with respect to Taxes against the Company or any Acquired Entity that has not been resolved with respect to any taxable period for which the period of assessment or collection remains open.

(d) Neither the Company nor any Acquired Entity has waived, extended, or requested a waiver or extension of any statute of limitations in respect of Taxes. Except as set forth on Schedule 3.17(d), no Tax Return of the Company or any Acquired Entity filed within the past six years has been subject to examination or audit.

(e) The unpaid Taxes of the Company and the Acquired Entities for periods ending on or prior to the date of the Financial Statements do not exceed the accruals for current Taxes set forth on the balance sheets included in the Financial Statements, and since the date of the Financial Statements, neither the Company nor any of the Acquired Entities has engaged in any transaction, or taken any other action, other than in the ordinary course of business, that would materially impact any Tax asset or Tax Liability of the Company and the Acquired Entities.

(f) Neither the Company nor any Acquired Entity is a party to any Tax allocation or sharing agreement that will be in effect as of the Closing Date other than any commercial agreement entered into in the Ordinary Course of Business, the primary purpose of which does not relate to Taxes. Except as set forth on Schedule 3.17(f), neither the Company nor any Acquired Entity (i) has been a member of an affiliated group filing a consolidated federal income Tax Return; or (ii) has Liability for the Taxes of any person under Treasury Regulation Section 1.1502-6 (or any other similar provision of state, local or non-U.S. law), as a transferee or successor, by Contract or otherwise (excluding any Contract entered into in the ordinary course of business, the primary focus of which is not Taxes).

(g) Neither the Company nor any Acquired Entities will be required to include any material item of income in, or exclude any material item of deduction from, its gross income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) election by the Company or any Acquired Entity of a change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement,” as described in Code Section 7121 (or any corresponding provision of state, local or foreign Tax Law); (iii) intercompany transactions or any excess loss account described in the Treasury Regulations under Code Section 1502 (or any corresponding provision of state, local or foreign Tax Law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) election under Section 108(i) of the Code; or (vi) prepaid amount, advance payments or deferred revenue received or accrued on or prior to the Closing Date. Neither the Company nor any Acquired Entities is or will be required to include any adjustment in taxable income for any Tax period pursuant to Section 481 or

263A of the Code or any comparable provision under state, local or non-U.S. Law as a result of transactions or events occurring, or accounting methods employed, prior to the date of this Agreement.

(h) There is no claim for Taxes that is an Encumbrance against the properties or assets of the Company or any Acquired Entity other than any Permitted Encumbrances.

(i) Neither the Company nor the Acquired Entities has entered into or participated in a “reportable transaction” within the meaning of Treasury Regulations Section 1.6011-4.

(j) Within the last two years, neither the Company nor any Acquired Entities has constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock intended to qualify for tax-free treatment under Sections 355 or 361 of the Code.

(k) Schedule 3.17(k) lists (i) the entity classification of the Company and each Acquired Entity for U.S. federal income Tax purposes, as of the date hereof and as of the Closing Date, and (ii) each entity classification election and change in entity classification that has been made under Treasury Regulation Section 301.7701-3 with respect to the Company and the Acquired Entity for U.S. federal income Tax purposes.

(l) Neither the Company nor the Acquired Entities has sought any relief under, or taken any action in respect of, (i) any provision of the CARES Act related to Taxes (including, but not limited to, the delaying of any payments in respect of payroll Taxes under Section 2302 thereof) or (ii) Internal Revenue Service Notice 2020-65.

(m) Other than as required pursuant to the terms of this Agreement, neither the Company nor any of its Affiliates has taken any action, has failed to take any action, nor does the Company have any Knowledge of any fact or circumstance, that would reasonably be likely to prevent the Merger from qualifying as a reorganization under Section 368 of the Code.

3.18 Insurance. Schedule 3.18(a) of the Company Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of (a) all insurance policies and programs of or Contracts for insurance and interests in insurance pools and programs (in each case, including self-insurance and insurance from Affiliates) maintained by the Company or any Acquired Entity or with respect to which the Company or any Acquired Entity is a named insured or otherwise the beneficiary of coverage (collectively, the “Insurance Policies”), and (b) all franchise, construction, fidelity, performance, surety and other bonds, standby letters of credit, cash deposits and similar security arrangements maintained by the Companies (collectively, the “Bonds”). The Company has made available to Parent all Insurance Policies and Bonds. All of the Insurance Policies and Bonds are in full force and effect, all premiums and/or payments that are due for current coverage periods of such Insurance Policies and Bonds have been paid and neither the Company nor any Acquired Entity is in material default thereunder (and neither the Company nor any of the Acquired Entities have taken any action or failed to take any action which, with notice or the lapse of time or both, would constitute such a breach or default, or permit termination or modification of, any such policy), to the Knowledge of the Company, no insurer on any such policy has been declared insolvent or placed in receivership, conservatorship or liquidation, and no notice of cancellation or termination has been received with respect to any such policy, and all pending claims thereunder have been filed in due and

timely fashion and except as disclosed on Schedule 3.18(b) of the Company Disclosure Schedule no claim has been denied or disputed, or has any insurance company threatened to deny or dispute coverage, within the past three years. Such Insurance Policies are with reputable insurers in such amounts and covering such risks as the Company reasonably believes, including based on its past experiences and similarly situated competitors, is adequate for the business and operations of the Company and the Acquired Entities.

3.19 Environmental Matters.

(a) Except as set forth on Schedule 3.19(a) or for matters that have not resulted and would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect,

(i) the Company and the Acquired Entities are and have been in material compliance with all Environmental Laws and Environmental Permits;

(ii) no Hazardous Substance has been Released at, on, under, to, in or from (A) the Properties, (B) any other property or facility now or previously owned, leased or operated by the Company or the Acquired Entities (or any of their respective predecessors), or (C) any property or facility to which any Hazardous Substance has been transported for disposal, recycling or treatment by or on behalf of the Company or the Acquired Entities (or any of their respective predecessors);

(iii) the Company and the Acquired Entities have obtained and hold all Authorizations required by Environmental Laws (“Environmental Permits”) to own and conduct the Business as currently owned and conducted, which are listed on Schedule 3.19(a), are in full force and effect; and the Company and the Acquired Entities have not received written notice that any Environmental Permits are reasonably likely to be terminated, revoked, or materially modified;

(iv) (A) no written claims, demands, notices of violation, requests for information, citations, summons, complaints, notices of investigations or inquiries from any Governmental Authority or Person have been received by the Company or any Acquired Entity, (B) no Order has been issued or is otherwise in effect, and (C) no Action is pending, or to the Knowledge of the Company threatened, in each case relating to non-compliance with or Liabilities related to any Environmental Law, Environmental Permit or Hazardous Substance with respect to the Company or any Acquired Entity;

(v) Neither the Company nor any Acquired Entity has assumed by Contract any Liabilities or obligations of third parties arising under or relating to any Environmental Law, Environmental Permit or Hazardous Substance;

(vi) to the Knowledge of the Company, all off-site Hazardous Substances treatment, storage, transport or disposal performed or arranged by or on behalf of the Company or any Acquired Entity has been conducted in compliance with all Environmental Laws; and

(vii) neither the Company nor any Acquired Entity has received any written notice regarding potential or alleged Liabilities under Environmental Law with respect to any off-site Hazardous Substances treatment, storage, transport or disposal.

(b) The Company has made available to Parent copies of all material environmental reports, studies, audits, records, sampling data, site assessments, closure reports, and correspondence with Governmental Authorities related to Environmental Laws, Hazardous Substances or Environmental Permits.

(c) The consummation of the transactions contemplated hereby requires no filings or notifications to be made or actions to be taken pursuant to the New Jersey Industrial Site Recovery Act or the Connecticut Property Transfer Law.

(d) Notwithstanding anything to the contrary in this Agreement, the representations and warranties in this Section 3.19 are the only representations and warranties given by the Company with respect to Environmental Laws, Hazardous Substances or Environmental Permits.

3.20 Ownership of Tangible Personal Property. Except as set forth on Schedule 3.20, the Company and each of the Acquired Entities has good title to, or valid leasehold or license interests, as the case may be, in all of their material respective assets used in the Business, free and clear of all Encumbrances other than Permitted Encumbrances.

3.21 Certain Business Practices. Neither the Company, the Acquired Entities, nor to the Company's Knowledge, any of their respective directors, offices, partners, managers, agents, employees or representatives has, during the past five (5) years, (a) made any unlawful contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other unlawful payment to any Person, private or public, regardless of what form, whether in money, property or services (i) to obtain favorable treatment for the Company or any of the Acquired Entities, (ii) to pay for favorable treatment for the Company or any of the Acquired Entities, (iii) to obtain special concessions or for special concessions already obtained; or (b) established or maintained any fund or asset with respect to the foregoing that has not been recorded properly in the books and records of the Company or any Acquired Entity; or (c) otherwise violated any provisions of the Foreign Corrupt Practices Act of 1977.

3.22 U.S. Trade Laws. The Company and the Acquired Entities are in compliance in all material respects with U.S. Trade Laws.

3.23 Sufficiency of Assets. The assets of the Company and each of the Acquired Entities, taking into account this Agreement and all Ancillary Documents (including the Perma Treat Agreement and the Pan Am Assignment) (and the rights expressly granted and services expressly to be performed hereunder and thereunder), constitute, in all material respects, all of the assets, rights and properties used in the conduct of the business by the Company and each of the Acquired Entities, and are sufficient for the Company and the Acquired Entities to conduct their respective businesses in all material respects as they have conducted such businesses during prior twelve month period.

3.24 Customers and Suppliers.

(a) Section 3.24(a) of the Company Disclosure Schedules sets forth a true and complete list of the ten (10) largest (measured by gross revenue to the Company and the Acquired Entities on a consolidated basis) customers (each, a “Material Customer”), to the Company for the twelve (12) months ended December 19, 2019.

(b) Section 3.24(b) of the Disclosure Schedules sets forth a true and complete list of the ten (10) largest (measured by gross expenditures by the Company and the Acquired Entities on a consolidated basis) suppliers (each, a “Material Supplier”) to the Company and the Acquired Entities for the twelve (12) months ended December 19, 2019.

(c) Since December 31, 2019, no Material Customer or Material Supplier has terminated or cancelled, or notified the Company or any of the Acquired Entities that it intends to terminate or cancel, or decreased materially or, to the Knowledge of the Company, threatened to decrease or limit materially (other than due to the COVID-19 pandemic), its relationship with the Company or any Acquired Entity, except with respect to all of foregoing as would not individually or in the aggregate, reasonably be expected to be material to the Company and the Acquired Entities, taken as a whole. Neither the Company nor any of the Acquired Entities is engaged in a material dispute with a Material Customer or Material Supplier. Since December 31, 2019, there has been no material change in the pricing or other material terms of the Company’s or any of the Acquired Entities’ business relationship with any Material Customer or Material Supplier, except changes made in the Ordinary Course of Business or due to the COVID-19 pandemic which changes would not, individually or in the aggregate, reasonably be expected to be material to any Company and its Subsidiaries, taken as a whole.

3.25 No Other Representations and Warranties. PARENT AND MERGER SUBS ACKNOWLEDGE AND AGREE THAT THEY (A) HAVE HAD AN OPPORTUNITY TO DISCUSS THE BUSINESS OF THE COMPANY AND THE ACQUIRED ENTITIES WITH ITS AND THEIR MANAGEMENT, (B) HAVE HAD REASONABLE ACCESS TO (I) BOOKS AND RECORDS OF THE COMPANY AND THE ACQUIRED ENTITIES AND (II) THE DOCUMENTS MADE AVAILABLE BY THE COMPANY FOR PURPOSES OF THE CONTEMPLATED TRANSACTIONS, (C) HAVE BEEN AFFORDED THE OPPORTUNITY TO ASK QUESTIONS OF AND RECEIVE ANSWERS FROM MANAGEMENT, AND (D) HAVE CONDUCTED THEIR OWN INDEPENDENT INVESTIGATION OF THE COMPANY AND THE ACQUIRED ENTITIES, THE BUSINESS AND THE CONTEMPLATED TRANSACTIONS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE III, AS QUALIFIED BY THE COMPANY DISCLOSURE SCHEDULES, NEITHER THE COMPANY NOR ANY OTHER PERSON, INCLUDING THE SHAREHOLDERS, MAKES ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE COMPANY OR ANY ACQUIRED ENTITY OR THE BUSINESS, AND THE COMPANY HEREBY DISCLAIMS ANY SUCH OTHER REPRESENTATION OR WARRANTY, AND PARENT HEREBY DISCLAIMS RELIANCE ON ANY SUCH OTHER REPRESENTATIONS AND WARRANTIES. NEITHER THE COMPANY NOR ANY OTHER PERSON, INCLUDING THE SHAREHOLDERS, SHALL BE DEEMED TO MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO (I) ANY PROJECTIONS, ESTIMATES OR BUDGETS HERETOFORE DELIVERED TO OR MADE AVAILABLE TO PARENT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES OF FUTURE REVENUES, EXPENSES OR EXPENDITURES OR FUTURE RESULTS OF OPERATIONS OF ANY OF THE COMPANY OR ANY

ACQUIRED ENTITY OR ANY ASPECT OF THE BUSINESS OR (II) EXCEPT AS EXPRESSLY COVERED BY A SPECIFIC REPRESENTATION AND WARRANTY CONTAINED IN THIS IN THIS ARTICLE III, ANY OTHER INFORMATION OR DOCUMENTS (FINANCIAL OR OTHERWISE) MADE AVAILABLE TO PARENT OR ANY OF ITS AFFILIATES OR REPRESENTATIVES WITH RESPECT TO THE COMPANY, ANY ACQUIRED ENTITY OR ANY ASPECT OF THE BUSINESS.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUBS

Except as disclosed in the Parent Disclosure Schedules, Parent and Merger Subs represent and warrant to the Company, as of the date hereof and as of the Closing Date, as follows:

4.1 Organization, Standing and Entity Power. Each of Parent and Merger Subs is duly organized and validly existing under the Laws of its jurisdiction of organization and has all requisite entity power and authority to carry on its business as presently conducted. Each of Parent and Merger Subs is duly qualified or licensed to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction where the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, other than where the failure to be so qualified, licensed or in good standing would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

4.2 Authority. Each of Parent and Merger Subs has all entity power and authority to enter into this Agreement and the Ancillary Documents to the extent a party thereto and to consummate the Contemplated Transactions. All necessary entity action and other proceedings required to be taken by each of Parent and Merger Subs to authorize the execution, delivery and performance of this Agreement and the Ancillary Documents to the extent a party thereto and the consummation of the Contemplated Transactions have been duly taken. This Agreement has been, and the Ancillary Documents will be, duly executed and delivered by or on behalf of each of Parent and Merger Subs to the extent a party thereto and, assuming the due execution by the Company of this Agreement and the Ancillary Documents, constitute the legal, valid and binding obligations of each of Parent and Merger Subs, enforceable against them in accordance with its terms, except as such enforceability may be limited by Laws applicable to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar Laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies or by general principles of equity.

4.3 No Conflict.

(a) Except for matters that have not resulted and would not, individually or in the aggregate, reasonably be expected to result in a Parent Material Adverse Effect solely with respect to clauses (i), (iii) or (iii) below, the execution, delivery and performance by Parent and Merger Subs of this Agreement and the consummation by Parent and Merger Subs of the Contemplated Transactions will not:

- (i) violate or conflict with or result in any breach of any provision of its organizational documents;

(ii) assuming the receipt of STB Approval, violate any provision of Law to which Parent or Merger Subs is subject or violate, results in a breach of or conflict with any provision of any Order applicable to either of them; or

(iii) violate, breach or constitute a default (with or without notice or lapse of time or both) under or give rise to a right of termination, cancellation, modification, purchase or repurchase, option exercise, put or call, or acceleration of any right, remedy or obligation under any term or provision of any material Contract to which Parent or Merger Subs is a party or event that, with the giving of notice, the passage of time or otherwise, would constitute a default or give rise to such right).

(b) Except for STB Approval, the execution, delivery and performance by Parent and Merger Subs of this Agreement and the consummation by them of the Contemplated Transactions do not require any consent from, license, waiver, permit, registration, declaration or other filing with or approval or authorization of any Governmental Authority, or observation of any waiting period under applicable Laws, by or with respect to them, other than the filing of the First Certificate of Merger, the Second Certificate of Merger and the Articles of Merger as required by applicable Law.

4.4 Financing. Parent will have as of the Closing sufficient cash available to pay any expenses incurred by Parent or Merger Subs in connection with the Contemplated Transactions and the Cash Merger Consideration and any Final Cash Adjustment.

4.5 Solvency. After giving effect to the Contemplated Transactions, at the Effective Time (a) the Surviving Corporation shall be able to pay its debts and obligations in the ordinary course of business as they become due; and (b) the Surviving Corporation will be solvent and will have adequate capital and liquidity with which to engage in its businesses on a consolidated basis.

4.6 Operations and Ownership of Merger Sub. The authorized capital stock of Merger Sub 1 and Merger Sub 2 consists solely, in each case, of [REDACTED] shares of common stock, par value [REDACTED] per share, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Subs, is and immediately prior to the Effective Time will be, owned by Parent. Merger Subs have been formed solely for the purpose of engaging in the Contemplated Transactions and prior to the Effective Time will have engaged in no other business activities and will have no assets, liabilities or obligations of any nature other than (i) as expressly contemplated herein and (ii) liabilities and obligations incidental to its formation and the maintenance of its existence.

4.7 Parent SEC Documents.

(a) Parent has filed all reports, schedules, forms, statements and other documents (including exhibits and other information incorporated therein) with the SEC required to be filed by Parent since December 31, 2017 (such documents, the “Parent SEC Documents”). As of their respective dates, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, applicable to such Parent SEC Documents, and none of the Parent SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under

which they were made, not misleading, unless such information contained in any Parent SEC Document has been corrected by a later-filed Parent SEC Document. The financial statements of Parent included in the Parent SEC Documents comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the financial position of Parent and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to the absence of footnote disclosure and to normal and recurring year-end audit adjustments).

(b) Except (i) as set forth in the financial statements included in Parent's most recent Annual Report on Form 10-K or subsequent Quarterly Reports on Form 10-Q filed by Parent and publicly available prior to the date of this Agreement and (ii) as incurred in the ordinary course of business, neither Parent nor any of its subsidiaries has any Liabilities or obligations of any nature (whether accrued or contingent) that individually or in the aggregate have had or would reasonably be expected to have a Parent Material Adverse Effect.

(c) Other than as required pursuant to the terms of this Agreement, neither Parent nor any of its subsidiaries has taken any action, has failed to take any action, or has Knowledge of any fact or circumstance, that would reasonably be likely to prevent the Merger from qualifying as a reorganization under Section 368 of the Code.

4.8 Brokers and Other Advisors. Except for Goldman & Sachs Co. LLC, no agent, broker, investment banker, financial advisor or other person is entitled to any broker's, finder's or financial advisor's fee, commission or any other similar fee from Parent, Merger Subs or any of their Affiliates in connection with the consummation of the Contemplated Transactions.

4.9 No Other Representations and Warranties. THE REPRESENTATIONS AND WARRANTIES MADE BY PARENT AND MERGER SUBS IN THIS ARTICLE IV ARE IN LIEU OF AND ARE EXCLUSIVE OF ALL OTHER REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUBS, INCLUDING ANY IMPLIED WARRANTIES, AND PARENT AND MERGER SUBS HEREBY DISCLAIM ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES AND THE COMPANY AND EACH SHAREHOLDER HEREBY DISCLAIMS RELIANCE ON ANY SUCH OTHER REPRESENTATIONS AND WARRANTIES.

ARTICLE V COVENANTS

5.1 Covenants of the Company. The Company hereby covenants and agrees as follows:

(a) Pre-Closing Access. Prior to the Closing, the Company shall (i) give Parent and its Representatives reasonable access to the Company's and each Acquired Entity's personnel, books, records, offices and other facilities and properties during mutually agreeable business hours for the purpose of facilitating the Contemplated Transactions (including in each case as related to the Identified CERCLA

Sites) (ii) make available to Parent and its Representatives, the officers and employees of the Company and the Acquired Entities, including any officers, employees or consultants with knowledge of the Identified CERCLA Sites (and shall instruct such Persons to cooperate with Parent in its investigation of the Business, the Company and the Acquired Entities), to the extent reasonably requested by Parent, and (iii) furnish to Parent and its Representatives such information concerning any of them and the Business which is reasonably requested (but not including any information with respect to any other Person interested in acquiring the Company and the Acquired Entities), and all such information provided to or received by Parent and its Representatives shall be subject to the Confidentiality Agreement; *provided*, however, that any such access shall (A) be granted at reasonable times during normal business hours, with advance notice to the Company, (B) be conducted in such a manner as not to interfere with the normal business operations of the Company and the Acquired Entities, (C) be subject to reasonable policies of the Company or any Acquired Entity, confidentiality obligations to third parties and applicable Laws, (D) be conducted under the supervision of the Company or its designated personnel and (E) be at the risk of Parent and its Representatives. Parent hereby agrees to indemnify and hold harmless the Company and the Acquired Entities and their respective Representatives with respect to any losses resulting from or arising out of such access attributable to Parent or its Representatives. In no event shall Parent, nor shall it permit any of its Representatives to, conduct any environmental sampling or drilling or to speak to or otherwise communicate with any employee, customer, lender or business relation of the Company or the Acquired Entities regarding the Contemplated Transactions prior to Closing without the prior written consent of the Company, which may be given or withheld in its discretion. No investigation by Parent or its Representatives pursuant to this Section 5.1(a) shall affect or be deemed to modify any representation or warranty made by the Company herein or create or constitute any new representation or warranty of the Company or any other Person.

(b) Ordinary Conduct. From and after the date hereof and prior to the Closing Date or earlier termination of this Agreement, except (v) as consented to in writing (including pursuant to the last sentence of this Section 5.1(b)) by Parent, which consent shall not be unreasonably withheld, conditioned or delayed, (w) to the extent required to comply with any applicable Law, (x) as set forth on Schedule 5.1(b), or (y) as otherwise expressly contemplated by this Agreement, including with respect to the grant of the Purchase ROFR immediately prior to Closing, the Company shall (except to the extent contemplated by the Pre-Closing Disposition), and shall cause the Acquired Entities to:

- (i) conduct the Business in the Ordinary Course of Business;
- (ii) use commercially reasonable efforts to (A) maintain their corporate or other existence in good standing (to the extent applicable), (B) preserve their business organization in a commercially reasonable manner, (C) retain the Employees, (D) maintain business and accounting records relative to the Business at least as complete and accurate as is consistent with past practice, (E) preserve the goodwill of the suppliers, customers and others having substantial business dealings with the Company and the Acquired Entities; (F) maintain the Company and the Acquired Entities' assets in good condition and repair, subject to ordinary wear and tear, (G) maintain procedures for protection of Company Intellectual Property, and (H) maintain presently existing insurance coverages with respect to the Business;

(iii) not (A) enter into, amend, terminate waive any material right under or cancel any Material Contract or any Contract that if in effect on the date hereof would be a Material Contract, except in the Ordinary Course of Business or as required by applicable Law (other than terminations attributable to the end of any term thereof or supplier by the counterparties thereto) or (B) enter into any Contract with any customer or vendor which the Company reasonably anticipates will involve annual payments or consideration furnished by or to the Company or the Acquired Entities (in the aggregate) of more than [REDACTED]

(iv) not materially increase its work force, and in any event, not hire or terminate other than for cause, any Person with a base salary of [REDACTED] or more, and not grant any salary, wage or compensation increase or increase any Employee benefit for any Employee (including incentive, commission or bonus payments) other than increases in base compensation for Employees with base compensation of less than [REDACTED] in the Ordinary Course of Business, except to satisfy contractual obligations existing as of the date hereof;

(v) not sell, transfer, assign, pledge, lease, sublease, license or otherwise transfer or dispose of or create any Encumbrance on, any of the Company's assets, securities, properties, interests, or business with a value in excess of [REDACTED] other than inventory or obsolete equipment in the Ordinary Course of Business;

(vi) not cancel any debt or waive or compromise any claim or right relating to the Business in one transaction or a series of related transactions, in each case, having a value in excess of [REDACTED]

(vii) not create, incur, assume, suffer to exist or otherwise become liable with respect to any Indebtedness;

(viii) not make any capital expenditure or commitment for capital expenditures in excess of [REDACTED] individually or [REDACTED] in the aggregate except for capital expenses in the capital expenditures budget to be agreed to by the Parties promptly after execution of this Agreement or to repair Property sustaining damage after the date hereof;

(ix) not enter into any joint venture, partnership or other similar third party co-venture or arrangement or purchase any material assets or any securities of any Person (other than supplies and inventory in the Ordinary Course of Business);

(x) not merge or consolidate with or into any other Person or permit any other Person to merge or consolidate with or into it or dissolve or effect a recapitalization or reorganization in any form of transaction, other than the Pre-Closing Disposition;

(xi) except as necessary in order to comply with applicable Laws or the express provisions of this Agreement or respond to changing business conditions, not make any material changes in policies and practices for conducting the Business;

(xii) not make any changes to any accounting methods, practices or policies, except as may be required under applicable Laws or GAAP, in each case as concurred in by the Company's independent public accountant;

(xiii) not settle, consent to the settlement of or compromise (A) [REDACTED]

[REDACTED] or (B) any Action, or enter into any consent decree or settlement agreement with any Governmental Authority, filed or otherwise instituted against it, or any officer, director, manager or partner of it, or related to the Business, including in each case with respect to the Identified CERCLA Sites and [REDACTED], other than, solely in the case of this clause (B), where the amount paid in settlement or compromise involves solely money damages and does not exceed [REDACTED] individually or [REDACTED] in the aggregate;

(xiv) maintain all existing state and federal Authorizations necessary to operate the Business without the imposition of any material penalty or material disruption in operations;

(xv) not (A) issue, deliver or sell, or authorize the issuance, delivery or sale of, any Equity Interests, or rights, warrants or options to purchase Equity Interests, (B) split, combine or reclassify any of its Equity Interests, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for Equity Interests, or (C) purchase, redeem or otherwise acquire, or offer to purchase, redeem or otherwise acquire any Equity Interests, or any rights, warrants or options to acquire any such Equity Interests except pursuant to the Shareholders Agreement;

(xvi) not amend its Organizational Documents;

(xvii) not (i) fail to prepare and timely file all Tax Returns required to be filed during such period or timely withhold and remit any Taxes required to be withheld, (ii) file any amended Tax Return, (iii) make, change or revoke any written Tax election, (iv) change any Tax accounting period or adopt or change any Tax accounting method, (v) obtain any Tax ruling or enter into any closing or similar agreement, (vi) surrender any right to claim a Tax refund, offset or other reduction in Tax liability, (vii) settle or compromise any material Liability for Taxes, (viii) agree to an extension or waiver of a statute of limitations for Taxes, or (ix) take any action that could have the effect of increasing the Tax liability, or decreasing any material Tax asset, of Parent, its Affiliates, the Company or any Acquired Entity for a Post-Closing Tax Period;

(xviii) not change an annual accounting period;

(xix) not enter into any agreement, arrangement or understanding with, directly or indirectly, any Shareholder or any Affiliate;

(xx) not enter into, establish, adopt or amend (except as may be required by applicable Law) any Employee Benefit Plan or collective bargaining agreement or any severance, retention, employment, consulting, change in control, pension, retirement, equity incentive, stock

purchase, savings, profit sharing, deferred compensation, consulting, bonus, or other employee benefit, incentive or welfare contract, plan agreement or arrangement, or any trust agreement (or similar arrangement) related thereto, in respect of any current or former director, officer, manager, partner, employee or other service provider of or to the Company or any Acquired Entity or take any action to accelerate the vesting or payment of any such arrangements;

(xxi) not close or relocate any offices or facilities at which the Business is conducted or open any new offices or facilities;

(xxii) not granting any new trackage rights other than operating rights up to five (5) miles to the extent necessary for the purpose of interchange with a third party carrier;

(xxiii) not entering into material Contracts for operating rights (including any haulage rights or any Contracts for operating rights or haulage rights with a term greater than one (1) year);

(xxiv) not abandon any part of its rail lines;

(xxv) make capital expenditures consistent with the capital expenditures budget to be agreed to by the Parties promptly after execution of this Agreement in all material respects;

(xxvi) manage working capital (including the timing of collection of accounts receivable and of the payment of accounts payable and the management of inventory) and deferred revenues in the Ordinary Course of Business in all material respects;

(xxvii) except for nonexclusive licenses granted in the Ordinary Course of Business, not sell, lease, license, sublicense, modify, terminate, abandon or permit to lapse, transfer or dispose of, create or incur any Lien on, or otherwise fail to take any action necessary to maintain, enforce or protect any material Entity Owned Intellectual Property;

(xxviii) not enter into any program or agreement whereby the Company receives cash or other funds that must be spent for specific purposes, including any Positive Train Control Program, or would otherwise give rise to any deferred revenue;

(xxix) not agree, resolve or commit to do any of the foregoing other than clauses (i), (ii), (xiv), (xxv) and (xxvi).

Notwithstanding Section 9.9 or anything to the contrary in this Section 5.1(b), the Parties acknowledge and agree that (x) the Company may request consent from Parent pursuant to this Section 5.1(b) by sending an email to one or more of [REDACTED] or [REDACTED] (or such other individuals as Parent may specify by notice to the Company) (each, a “Parent Consent Party”) specifically referencing the applicable sub-sections of this Section 5.1(b), and (y) an e-mail from one or more of the Parent Consent Parties specifically referencing this Section 5.1(b) and expressly granting such consent shall constitute a valid form of consent of Parent for all purposes under this Section 5.1(b).

(c) Nothing contained in this Agreement shall give to Parent, directly or indirectly, rights to control or direct the operations of the Company or any Acquired Entity prior to the Closing Date. Prior to the Closing Date, each of the Company and the Acquired Entities shall, exercise, consistent with the terms and conditions of this Agreement, complete control and supervision of their respective operations.

(d) To the extent that (1) any current or former Employee would be entitled to any payment or benefit in connection with the transactions contemplated by this Agreement and (2) such payment or benefit would potentially constitute a “parachute payment” under Section 280G of the Code, the Company or the relevant Acquired Entity shall, prior to the Closing:

(i) use its reasonable best efforts to obtain a binding written waiver by such Employee of any such portion of such parachute payment as exceeds 2.99 times such Employee’s “base amount” within the meaning of Section 280G(b)(3) of the Code (the “Waived Payments”) to the extent such excess is not subsequently approved pursuant to a stockholder vote by the Company or the applicable Acquired Entity in accordance with the requirements of Section 280G(b)(5)(B) of the Code;

(ii) provide to the Company and the Acquired Entity stockholders all such disclosure as is required under Section 280G(b)(5)(B)(ii) of the Code and provide Parent a reasonable opportunity to review and comment on such disclosure before it is distributed to the Company and the Acquired Entity stockholders and all other documents prepared by the Company or the Acquired Entity in connection with this Section 5.1(d);

(iii) hold a vote of the Company and the Acquired Entity stockholders in a manner that is intended to satisfy the requirements of Section 280G(b)(5)(B) of the Code; and

(iv) deliver to Parent certification that the vote of the Company and the Acquired Entity stockholders solicited in conformity with the requirements of Section 280G(b)(5)(B) of the Code and (x) the requisite Company and Acquired Entity stockholder approval of the Waived Payments was obtained or (y) such stockholder approval was not obtained and, as a consequence, that the Waived Payments shall not be made or provided.

5.2 Cooperation; Efforts to Close.

(a) Each of Parent, Merger Subs and the Company shall use reasonable best efforts to take such actions and do such things and execute such documents as are reasonably necessary, proper, or advisable to consummate the Contemplated Transactions, make effective, and comply with all of the terms of this Agreement (including satisfaction, but not waiver, of the Closing conditions for which it is responsible or otherwise in control, as set forth in Article VII). Each of Parent, Merger Subs and the Company shall reasonably cooperate with each other in connection with all actions to be taken in connection with the foregoing sentence (including satisfaction, but not waiver, of the Closing conditions for which it is responsible or otherwise in control, as set forth in Article VII).

(b) In furtherance and not in limitation of the foregoing, each Party hereto agrees to as promptly as reasonably practicable, file any notification or other filing or form or submission (or, for jurisdictions where submission of a draft prior to formal notification is appropriate, a draft thereof),

necessary to obtain STB Approval; *provided* that in any event Parent shall seek to obtain in the most expeditious manner practicable the STB Approval by filing, either an application pursuant to 49 U.S.C. § 11323 et seq. for approval of the Contemplated Transactions (including all necessary documentation), or, if the Contemplated Transactions are deemed to be “significant” within the meaning of 49 C.F.R. § 1180.2(b), a prefiling notice pursuant to 49 C.F.R. § 1180.4(b)(1), in each case with all necessary filing fees to be at Parent’s sole cost and expense, and to promptly make any subsequent record filings with or presentations to the STB in connection with such application or prefiling notice.

(c) Each of Parent, Merger Subs and the Company shall keep the others apprised of the status of matters relating to the completion of the Contemplated Transactions and work cooperatively in connection with obtaining the requisite consents of each applicable Governmental Authority or third-party (*provided* that Parent shall be responsible for obtaining STB Approval), including:

(i) cooperating with each other in connection with filings under applicable Laws in connection with the Contemplated Transactions;

(ii) furnishing to the other Party all information within its possession that is required for any notification or other filing to be made by the other Party pursuant to applicable Laws in connection with the Contemplated Transactions;

(iii) promptly notifying each other of any communications from or with any Governmental Authority with respect to the Contemplated Transactions;

(iv) using commercially reasonable efforts to respond as soon as reasonably practicable to any request by a Governmental Authority for information with respect to the Contemplated Transactions; and

(v) consulting and cooperating with one another in connection with all analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any Party in connection with proceedings under or relating to applicable Laws in connection with the Contemplated Transactions.

(d) Neither Parent nor Merger Subs nor any of their controlled Affiliates shall acquire or agree to acquire, by merging with or into or consolidating with, or by purchasing assets of or Equity Interests in, or by any other manner, any Person if the entering into of a definitive agreement relating to, or the consummation of such acquisition, merger or consolidation would reasonably be expected to: (i) impose any material delay in the obtaining of, or materially increase the risk of not obtaining, any consents of any Governmental Authority necessary to consummate the Contemplated Transactions or materially extending the expiration of any applicable waiting period; (ii) materially increase the risk of any Governmental Authority seeking or entering an Order prohibiting the consummation of the Contemplated Transactions; or (iii) materially increase the risk of not being able to remove any such Order or appeal or otherwise.

(e) Notwithstanding the foregoing or anything else in this Agreement to the contrary, no Party shall have any obligation to offer or pay any consideration (other than customary filing or processing fees with Governmental Authorities) or take any extraordinary action in order to obtain any consents, approvals or authorizations.

5.3 Directors' and Officers' Indemnification and Insurance.

(a) For a six year period from and after the Effective Time, Parent agrees that it will cause the Surviving Corporation and the Acquired Entities to indemnify and hold harmless each present and former director and officer of the Company or any of the Acquired Entities (in each case, to the extent acting in such capacity) (the "Indemnified Parties"), against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages, liabilities or awards paid in settlement incurred in connection with any actual or threatened Action, arising out of, relating to or in connection with the fact that such Person is or was a director or officer of the Company or any of the Acquired Entities, or any acts or omissions occurring or alleged to occur prior to the Effective Time in such Person's capacity as a director or officer of the Company or any Acquired Entity, whether asserted or claimed prior to, at or after the Effective Time, to the fullest extent that the Company or any Acquired Entity would have been permitted under applicable law and its Organizational Documents in effect on the date of this Agreement to indemnify such Person, and the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) advance expenses (including reasonable legal fees and expenses) incurred in the defense of any Action, including any expenses incurred in successfully enforcing such Person's rights under this Section 5.3 regardless of whether indemnification with respect to or advancement of such expenses is authorized under the Organizational Documents of the Company or of any Acquired Entity, *provided* that the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification pursuant to this Section 5.3. In the event of any such Action (x) neither Parent nor the Surviving Corporation nor any Acquired Entity shall settle, compromise or consent to the entry of any judgment in any Action in which indemnification has been sought by such Indemnified Party hereunder without the consent of the Indemnified Party (not to be unreasonably withheld, delayed or conditioned), unless such settlement, compromise or consent relates only to monetary damages for which the Surviving Corporation or any Acquired Entity is entirely responsible or includes an unconditional release of such Indemnified Party from all liability arising out of such Action or such Indemnified Party otherwise consents in its sole discretion and (y) the Surviving Corporation and any Acquired Entities shall reasonably cooperate with the Indemnified Party in the defense of any such matter. In the event any Action is brought against any Indemnified Party and in which indemnification could be sought by such Indemnified Party under this Section 5.3, (i) the Surviving Corporation shall have the right to control the defense thereof after the Effective Time, (ii) each Indemnified Party shall be entitled to retain his or her own counsel, whether or not the Surviving Corporation shall elect to control the defense of any such Action (iii) the Surviving Corporation shall pay all reasonable fees and expenses of any counsel retained by an Indemnified Party promptly after statements therefor are received, and (iv) no Indemnified Party shall be liable to Parent or the Surviving Corporation or any Acquired Entity for any settlement effected without his prior written consent; *provided* that for purposes of clause (iii) the Indemnified Party on behalf of whom fees and expenses are paid provides an undertaking to repay such fees and expenses if it is ultimately determined that such Person is not entitled to indemnification pursuant to this Section 5.3).

(b) Any Indemnified Party wishing to claim indemnification under Section 5.3 upon learning of any such Action, shall promptly notify the Surviving Corporation thereof, but the failure to notify shall not relieve the Surviving Corporation of any liability it may have to such Indemnified Party except to the extent such failure materially prejudices the indemnifying Party.

(c) For a period of six years after the Effective Time, the provisions in the Surviving Corporation's and the Acquired Entities' Organizational Documents with respect to indemnification, advancement of expenses and exculpation of former or present directors and officers shall be no less favorable to such directors and officers than such provisions contained in the Company's and the Acquired Entities' Organizational Documents in effect as of the date hereof, which provisions shall not be amended, repealed or otherwise modified for a period of six years after the Closing Date in any manner that would adversely affect the rights thereunder of any such individuals.

(d) In connection with the Closing, the Company shall purchase from its insurance carriers, no later than the Closing Date, a six year prepaid "tail policy" providing at least the same coverage and amounts and containing terms and conditions that are no less advantageous in the aggregate to the insureds than the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Company and the Acquired Entities with respect to claims arising from facts or events that occurred at or before the Closing Date, including the Contemplated Transactions. The Company shall (and Parent shall cause the Surviving Corporation to) maintain such "tail policy" in full force and effect and continue to honor its obligations thereunder. Parent also agrees to cause the Surviving Corporation to honor and perform under all indemnification agreements and the advancement of expenses agreements set forth on Schedule 5.3(d). The cost of such tail insurance shall not be considered an Unpaid Transaction Expense and Parent shall reimburse the Company for the cost thereof in connection with the Closing.

(e) If the Surviving Corporation or any Acquired Entity or any of their respective successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation or any Acquired Entity shall assume all of the obligations set forth in this Section 5.3.

(f) The provisions of this Section 5.3 shall survive the Closing and the Effective Time, are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties and their heirs and representatives.

(g) The rights of the Indemnified Parties under this Section 5.3 shall be in addition to any rights such Indemnified Parties may have under the Organizational Documents of the Company or any of the Acquired Entities, or under any applicable Contracts or Laws. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or any of the Acquired Entities or their officers, directors and employees, it being understood that the indemnification provided for in this Section 5.3 is not prior to, or in substitution for, any such claims under any such policies.

5.4 Publicity. None of Parent, Merger Subs or the Company or any of their Representatives shall issue or cause the publication of any press release or other public announcement, or otherwise communicate with the media, concerning the Contemplated Transactions without the prior consent of the other such Parties hereto, except (i) as such release or announcement may be required by Law or stock exchange rules (it being acknowledged that Parent may disclose this Agreement and the Contemplated

Transaction pursuant to Item 8.01 of Form 8-K), in which case the disclosing Party shall notify the other Parties hereto and, to the extent possible, allow such other Parties reasonable time to comment on such release or announcement in advance of such issuance and such comments will be considered in good faith or (ii) to the extent the contents of such release or announcement have previously been released publicly by a Party or are consistent in all material respects with materials or disclosures that have previously been released publicly, in both cases, without violation of this Section 5.4.

5.5 Insurance Recovery for the Hoosac Tunnel. From and after the Closing, to the extent any principal amounts are paid by PAS to PAR in connection with the repayment of any indebtedness pursuant to the Hoosac Tunnel Loan (including any such amount that is forgiven, offset or for which there is a forbearance without any payment to PAR from PAS, which shall be deemed to be paid at the time of such forgiveness, offset or forbearance), Parent shall, or shall cause its applicable Affiliate to, pay to the Shareholders, in accordance with the Allocation Statement, [REDACTED] of such principal amounts received by PAR by wire transfer of immediately available funds. If the cost of repairs and improvements to the Hoosac Tunnel after its collapse in 2020 (the “Hoosac Tunnel Costs”) is not fully recovered by the Company or any of the Acquired Companies prior to Closing, from and after Closing, Parent shall cause the Surviving Corporation and the Acquired Companies to, (i) use commercially reasonable efforts to pursue and collect as promptly as practicable on the claim asserted by PAR against AIG insurance company for the Hoosac Tunnel Costs (including by litigation with experienced counsel) and (ii) upon the Shareholder Representative’s request, update the Shareholder Representative as to the status thereof in reasonable detail. As soon as reasonably practicable after receipt by Parent, the Surviving Corporation or any of the Acquired Companies of any payment in connection with such claim, Parent shall, or shall cause its applicable Affiliate to, pay to the Shareholders, in accordance with the Allocation Statement, the Conveyance Amount by wire transfer of immediately available funds.

5.6 Reorganization Treatment. The Parties intend the Merger to qualify as a reorganization under Section 368(a)(1)(A) and (a)(2)(D) of the Code and the Parties will take the position for all tax purposes (including the filing of all Tax and information returns) that the Merger so qualifies unless a contrary position is required by a final determination within the meaning of Section 1313 of the Code. The Company and Parent shall, and shall cause their respective Affiliates to, cooperate reasonably to enable their respective counsel to deliver opinions in support of such intended treatment, including by delivery of tax representation letters, dated as of the Closing Date and signed by an officer, containing customary representations in support of such opinions (with any appropriate modifications to reflect the terms and conditions of this Agreement).

5.7 Further Assurances. On and after the Closing Date, and for no further consideration, the Parties will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof or to more effectively complete the Contemplated Transactions.

5.8 No Solicitation. The Company (i) shall immediately cease and cause to be terminated any activities, discussions or negotiations commenced prior to the date of this Agreement by the Company or the Acquired Entities with any parties other than Parent with respect to the Contemplated Transactions, (ii) shall not initiate or engage in any such activities, discussions or negotiations after the date hereof (unless this Agreement is otherwise terminated) with any third party regarding the foregoing and (iii) shall not

provide, directly or indirectly, any Confidential Information to any parties other than Parent and its Representatives with respect to the Contemplated Transactions, including removing access to the Data Room by any parties other than Parent and its Representatives.

5.9 Notification of Certain Matters. Each Party shall promptly notify the other Parties in writing of any Action that has been instituted or, to the Knowledge of the Company or the Knowledge of Parent, threatened against such Party to restrain, prohibit or otherwise challenge the legality or validity of any of the Contemplated Transactions. Each Party hereto shall promptly notify the other Parties in writing of the occurrence of any matter or event that would or would reasonably be expected to cause any of the conditions set forth in Section 7.1 not to be satisfied. The Company shall promptly notify Parent in writing of the occurrence of any matter or event that would or would reasonably be expected to cause any of the conditions set forth in Section 7.2 not to be satisfied. Each of Parent and Merger Subs shall promptly notify the Company in writing of the occurrence of any matter or event that would or would reasonably be expected to cause any of the conditions set forth in Section 7.2(h) not to be satisfied. The Company shall promptly notify Parent of any notice or other communication from any Person asserting that such Person's consent is required, or that such Person is entitled to compensation or consideration from any of Parent, Merger Subs, the Company or any of their respective Affiliates, in connection with the Contemplated Transactions or any notice, letter or other communication received from a Governmental Authority with respect to any material matters. The delivery of any notice pursuant to this Section 5.9 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

5.10 Non-Solicitation. Each Shareholder shall not, and shall not permit or cause any of its respective Affiliates (including the Excluded Entities) to, at any time from and after the date hereof and prior to eighteen (18) months after the Closing Date, directly or indirectly, (i) solicit the employment or services (whether as an employee, consultant, independent contractor or otherwise) of any individual who is an Employee as of the date hereof (the "Restricted Employees"), or seek to persuade any Restricted Employee to discontinue employment or engagement, in each case without Parent's prior written consent, or (ii) hire in any capacity (whether as an employee, consultant, independent contractor or otherwise) any Restricted Employee, unless such Person has been terminated by Parent or any of its Affiliates subsequent to the Closing and has not been employed or engaged by the Company or any Acquired Entity for a period of at least six (6) months prior to the date of such hire, without Parent's prior written consent. For purposes of this Section 5.10, the terms "solicit the employment or services" shall not be deemed to include generalized searches for employees through media advertisements of general circulation, employment search firms, open job fairs or otherwise.

5.11 Intercompany Accounts. Effective at the Closing, all intercompany accounts or indebtedness, between any of the Shareholders, the Excluded Entities or any of their respective Affiliates (other than the Company or the Acquired Entities), on the one hand, and the Company or any of the Acquired Entities, on the other hand, shall be settled or otherwise eliminated and unless Parent otherwise consents, it being understood that, from and after the Closing, Parent, the Company and the Acquired Entities shall have no obligation or liability (including any Tax liability) with respect to any such intercompany accounts or indebtedness or the settlement or elimination thereof.

5.12 Intercompany Agreements. Effective at the Closing, all arrangements, understandings or Contracts, including all obligations to provide goods, services or other benefits, by any of the Shareholders,

the Excluded Entities or any of their respective Affiliates (other than the Company or the Acquired Entities), on the one hand, and the Company or any of the Acquired Entities, on the other hand, that are not otherwise covered under Section 5.11, shall be terminated without any party having any continuing obligations or Liability to the other, except for (a) this Agreement and the Ancillary Documents and (b) any arrangements, understandings or Contracts listed in Schedule 5.12.

5.13 Confidentiality. The Shareholder Representative acknowledges that the success of the Company and the Acquired Entities after the Effective Time depends upon the continued preservation of the confidentiality of information regarding the business, operations and affairs of the Company and the Acquired Entities (including trade secrets, confidential information and proprietary materials, which may include the following categories of information and materials: methods, procedures, computer programs and architecture, databases, customer information, lists and identities, employee lists and identities, pricing information, research, methodologies, contractual forms, and other information, whether tangible or intangible, which is not publicly available generally) and the terms of this Agreement, the Ancillary Documents and the Contemplated Transactions, to the extent not publicly disclosed as permitted by the Agreement (collectively, the “Confidential Information”) accessed or possessed by the Shareholder Representative and its Affiliates and that the preservation of the confidentiality of such information by the Company and the Acquired Entities (prior to the Effective Time), the Shareholders, the Shareholder Representative and their respective Affiliates is an essential premise of the transactions contemplated by this Agreement. The Shareholder Representative shall hold, and shall cause its Representatives to hold, in confidence and not disclose to any other Person or use (other than (i) for the purposes of enforcing the rights of the Shareholder Representative or the Shareholders under this Agreement and any other agreements entered into in connection with the Contemplated Transactions or (ii) in the Ordinary Course of Business), any Confidential Information. Notwithstanding the foregoing, any such Person may disclose Confidential Information as and to the extent required by Applicable Law, so long as the disclosing party (x) provides prior written notice, where permitted thereof to the party whose information will be disclosed and (y) uses commercially reasonable efforts to cause such information so disclosed to be kept confidential.

5.14 Release.

(a) Effective as of the Closing (in the case of the following clauses (i) and (ii)) and effective as of the date hereof (in the case of the following clause (iii)), each of Parent, on behalf of itself and each of its Affiliates (including the Company and the Acquired Entities), and Shareholders, on behalf of themselves and each of their respective Affiliates, or any Person claiming by, through or for the benefit of any of them, and each of their respective successors and assigns, hereby irrevocably, unconditionally and completely waives and releases and forever discharges the other party to this Agreement and its Affiliates (including, in the case of Parent, the Company and the Acquired Entities) and each of their respective directors, officers, employee, heirs, executors, administrators, successors and assigns (such released Persons, the “Releasees”), in each case from all demands, Actions, causes of action, suits, accounts, covenants, Contracts, losses and Liabilities whatsoever of every name and nature, both in law and in equity, arising out of or related to events, circumstances or actions taken by the Releasees (including the Company and the Acquired Entities) (i) occurring or failing to occur, in each case, at or prior to the Closing, including in connection with Contemplated Transactions, (ii) relating to any alleged inaccuracy or miscalculations in, or otherwise relating to the preparation of the Allocation Statement and the calculations set forth therein, or the allocation of any proceeds hereunder (including by the Shareholder Representative) or (iii) relating

to the payment of the Deposit to the Shareholder Representative on the date hereof or any payment (or failure to make payment) of such amount by the Shareholder Representative after the date hereof. No party hereto shall make, and neither party hereto shall permit any of its Affiliates to make, and each party hereto covenants never to, and to cause its Affiliates not to, assert or voluntarily assist any Person in any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against any of the Releasees with respect to any Liabilities released pursuant to this Section 5.14(a). Without limitation of the foregoing, each of Parent, on behalf of itself and each of its Affiliates (including the Company and the Acquired Entities), and Shareholders, on behalf of themselves and each of their respective Affiliates, or any Person claiming by, through or for the benefit of any of them, and each of their respective successors and assigns hereby waives the application of any provision of law, including California Civil Code Section 1542, that purports to limit the scope of a general release. Section 1542 of the California Civil Code provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

(b) Notwithstanding the foregoing, Section 5.14(a) shall not constitute a release from, waiver of, or otherwise affect any rights of any Party or its Affiliates with respect to (i) Fraud or under this Agreement or any Ancillary Document or any Liability or Contract expressly contemplated by this Agreement or any Ancillary Document or any other agreement to be in effect between Parent and Shareholders (or their respective Affiliates) after the Closing, or any enforcement thereof, (ii) if such releasing party is an Employee, rights to earned but unpaid wages or compensation, benefits and unreimbursed business expenses and (iii) rights to indemnification under the Organizational Documents or coverage under any directors’ and officers’ liability insurance of the Company or any of the Acquired Entities.

(c) Each Releasee that is not a Party (including, in the case of Parent as the releasing party, each Shareholder) shall be a third-party beneficiary of this Section 5.14.

5.15 Payoff Letters. No later than three Business Days prior to the Closing Date, the Company shall deliver to Parent payoff letters with respect to any Indebtedness of the types set forth in clauses (i) through (v) of the definition thereof (excluding the Hoosac Tunnel Loan and including any PPP Loan, if still outstanding at such time), of the Company and the Acquired Entities outstanding as of immediately prior to the Effective Time (including under the Credit Facility), to be provided by the lenders or creditors in respect thereof, dated within a reasonable time prior to the Closing Date, which shall, in each case, (a) set forth the aggregate amount of Indebtedness arising under or owing or payable thereunder and in connection therewith on the Closing Date and (b) acknowledge and agree that, upon payment of such aggregate amounts on the Closing Date, the Company and the Acquired Entities shall have paid in full all amounts arising under or owing or payable thereunder and in connection therewith, and all Liens related to such Indebtedness shall be released, each in form and substance reasonably satisfactory to Parent (the “Payoff Letters”). Without limiting the foregoing, the Company shall, and shall cause each Acquired Entity to, cooperate with and take all actions reasonably requested by Parent in order to facilitate the termination

and payoff of all of the Indebtedness of the Company and the Acquired Entities (including under the Credit Facility) (and, in each case, related release of Encumbrances) at the Closing.

5.16 Pre-Closing Disposition. Notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that prior to the Closing, the Company and its Subsidiaries will take all actions and steps to effectuate the transactions in Pre-Closing Disposition Plan in accordance with applicable Law, including by procuring all necessary third-party or governmental consents, approvals or permits (all such actions, the “Pre-Closing Disposition”). Neither the Company nor the Shareholders shall modify or amend the Pre-Closing Disposition Plan in any material respect unless it has received the prior written consent of Parent (not to be unreasonably withheld, conditioned or delayed). If Parent requests, the Company shall provide or cause to be provided all of the material implementing documents in respect of the Pre-Closing Disposition to Parent for its review and comment reasonably in advance of execution. The Company shall keep Parent reasonably informed as to the status of the Pre-Closing Disposition (including providing updates upon Parent’s request).

5.17 Change in Control Severance. Parent agrees that following the Closing, it will pay or cause to be paid, all amounts when and if they become due and payable under and in accordance with the terms of the change in control severance agreements set forth on Schedule 5.17.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE VI TAX MATTERS

6.1 Preparation of Tax Returns by the Company. The Company shall prepare or cause to be prepared and timely file or cause to be filed, all income and other material Tax Returns for the Company and the Acquired Entities for all Pre-Closing Tax Periods that have not yet been filed but which are due on or before the Effective Time. All such Tax Returns shall be prepared consistently with the past practice of the relevant entity, except as otherwise required by applicable Laws. At least thirty (30) days prior to the due date for each such income Tax Return prepared by Company, the Company shall submit such Tax Return to Parent for Parent's review, comment and approval, which approval may be withheld only if such Tax Return has not been prepared in accordance with the requirements of this Section 6.1. The Company shall incorporate any reasonable comments from Parent.

6.2 Cooperation. Parent, the Company, the Surviving Corporation and Shareholder Representative shall cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to Section 6.1 and Section 6.2, and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information that are reasonably relevant to any such audit, litigation

or other proceeding and making Employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

6.3 Transfer Taxes and Fees. Any transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other similar fees and charges (including any penalties and interest) incurred in connection with consummation of the Contemplated Transactions by this Agreement and the other Ancillary Documents (other than with respect to the Disposition) (“Transfer Taxes”) shall be borne by Parent. The Parties shall cooperate with each other in connection with the filing of any Tax Returns relating to Transfer Taxes, including joining in the execution of any such Tax Return or other documentation where necessary. Upon request of Parent, Shareholder Representative shall use its commercially reasonable efforts to obtain any certificate or other document from any Person as may be necessary to mitigate, reduce or eliminate any Transfer Tax. Unless otherwise required by applicable Law, the party required by Law to file a Tax Return with respect to such Transfer Taxes shall timely prepare, with the other party’s cooperation, and file such Tax Return, and shall promptly provide to the other party copies of all filed Tax Returns relating to Transfer Taxes and reasonable evidence that all Transfer Taxes have been timely paid.



ARTICLE VII CONDITIONS TO THE MERGER

7.1 Conditions to the Obligations of Parent, Merger Subs and the Company. The respective obligations of Parent and the Merger Subs on one hand and the Company on the other hand to effect the Contemplated Transactions shall be subject to the satisfaction or waiver by Parent and the Company, as applicable, at or prior to the Effective Time of the following:

(a) No Law that restrains, enjoin, makes illegal or otherwise prohibits the Contemplated Transactions shall have been enacted, adopted or promulgated and be in effect.

(b) No temporary restraining order, preliminary or permanent injunction, decree, judgment, legal restraint, writ, ruling, consent or other order of a court of competent jurisdiction or other Governmental Authority (an “Order”) which materially restricts, restrains, enjoins, makes illegal or otherwise prohibits the Contemplated Transactions will have been issued, entered or enforced and be in effect.

(c) No action or proceeding by a Governmental Authority seeking an Order which impairs, restrains, enjoins, makes illegal or otherwise prohibits the Contemplated Transactions shall be pending.

7.2 Conditions to the Obligations of Parent and Merger Subs. The obligation of Parent and Merger Subs to effect the Contemplated Transactions shall be subject to the satisfaction or waiver by Parent and Merger Subs at or prior to the Closing of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Company set forth in the Section 3.1, Section 3.2 and Section 3.8 (collectively, the “Fundamental Representations”) shall be true and correct in all material respects as of the Closing Date, except any such representations and warranties that are made as of a specific date shall be true and correct in all material respects only on and as of such date and (ii) each of the other representations and warranties of the Company contained in this Agreement will be true and correct as of the Closing Date except any such representations and warranties that are made as of a specific date shall be true and correct only on and as of such date, and except, in the case of this clause (ii), for the failure or failures of such representations and warranties to be so true and correct (after excluding any effect of “materiality” or “Company Material Adverse Effect” qualifications or similar qualifications as to materiality set forth in any such representation or warranty) that have not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Covenants and Agreements. The Company and the Shareholder Representative will have performed in all material respects all of the covenants and agreements required to be performed by it or him under this Agreement prior to the Closing.

(c) Company’s Officer’s Certificate. The Company will have delivered to Parent a certificate from a duly authorized officer, dated as of the Closing Date, stating that the conditions applicable to the Company specified in subsections (a) and (b) of this Section 7.2 have been satisfied.

(d) No Company Material Adverse Effect. A Company Material Adverse Effect will not have occurred.

(e) Support Agreement. The Support Agreement and the Written Consent, in each case duly executed by the parties thereto, shall be in full force and effect.

(f) Closing Deliveries. The Company and Shareholder Representative will have delivered all of the closing deliverables set forth in Section 2.7(a).

(g) STB Approval. STB Approval shall have been obtained and shall not be subject to any term or condition that is not acceptable to Parent in Parent’s reasonable discretion.

(h)

7.3 Conditions to the Obligations of the Company. The obligations of the Company to effect the Contemplated Transactions will be subject to the satisfaction or waiver by the Company at or prior to the Closing of the following conditions:

(a) Representations and Warranties. (i) The representations and warranties of the Parent and Merger Subs set forth in the Section 4.1, Section 4.2 and Section 4.8 shall be true and correct in all material respects as of the Closing Date, except any such representations and warranties that are made as of a specific date shall be true and correct in all material respects only on and as of such date and (ii) each of the other representations and warranties of Parent and Merger Subs contained in this Agreement will be true and correct as of the Closing Date except any such representations and warranties that are made as of a specific date shall be true and correct only on and as of such date, and except, in the case of this clause (ii), for the failure or failures of such representations and warranties to be so true and correct (after excluding any effect of “materiality” or “Parent Material Adverse Effect” qualifications or similar qualifications as to materiality set forth in any such representation or warranty) that has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Covenants and Agreements. Parent and Merger Subs will have performed in all material respects all of the covenants and agreements required to be performed by them under this Agreement prior to the Closing.

(c) Officer’s Certificate. Parent will have delivered to Shareholder Representative a certificate from a duly authorized officer of Parent, dated as of the Closing Date, stating that the applicable conditions specified in subsections (a) and (b) of this Section (h) have been satisfied and certifying that it has corporate authority to execute this Agreement and consummate the Contemplated Transactions.

(d) Closing Deliveries. Parent and Merger Subs will have delivered all of the closing deliveries set forth in Section 2.7(b).

(e) No Parent Material Adverse Effect. No Parent Material Adverse Effect will have occurred.

(f) STB Approval. STB Approval shall have been obtained.

ARTICLE VIII TERMINATION

8.1 Termination. This Agreement may be terminated by written notice (given by Parent to the Company or by the Company to Parent, as the case may be) at any time prior to the Closing:

(a) by the mutual written consent of the Company and Parent;

(b)

(c) by either the Company or Parent, if (i) STB Approval has been denied and such denial has become final and nonappealable, (ii) any Governmental Authority will have issued a final nonappealable Order enjoining or otherwise prohibiting the consummation of the Contemplated Transactions or (iii) any Law has been enacted, adopted or promulgated and is in effect that restrains, enjoins, makes illegal or otherwise prohibits the Contemplated Transactions;

(d) by Parent:

(i) if it and Merger Subs are not in material breach of their obligations under this Agreement, and if (A) at any time that any of the representations and warranties of the Company herein become untrue or inaccurate such that Section 7.2(a) would not be satisfied or (B) there has been a breach on the part of the Company of any of its covenants or agreements contained in this Agreement such that Section 7.3(b)7.2(b) would not be satisfied, and, in both clause (A) and clause (B), such breach or failure to be true or accurate (if curable) has not been cured within thirty (30) days after Parent has provided written notice thereof to the Company;

(ii) if (A) all of the conditions to Closing set forth in Sections 7.1 and (h) have been satisfied (other than those conditions that, by their terms, cannot be satisfied until the Closing but which are reasonably expected to be satisfied at the Closing), (B) Parent has confirmed in a written notice to the Company that it is ready, willing and able to perform its obligations to effect the Contemplated Transactions and (C) the Company fails to fulfill its obligation to effect the Contemplated Transactions within two (2) Business Days of such written notice pursuant to the immediately preceding clause (B); or

(iii) if the Company fails to deliver to Parent, by 12:00 p.m. on the date immediately following the date hereof, a copy of the duly executed and delivered Written Consent; or

(e) by the Company:

(i) if the Company is not in material breach of its obligations under this Agreement, and if (A) at any time that any of the representations and warranties of Parent and Merger Subs herein become untrue or inaccurate such that Section 7.3(a) would not be satisfied or (B) there has been a breach on the part of Parent and Merger Subs of any of their covenants or agreements contained in this Agreement such that Section 7.3(b) would not be satisfied, and, in both case (i) and case (i), such breach or failure to be true or accurate (if curable) has not been cured within thirty (30) days after the Company has provided written notice thereof to Parent; or

(ii) if (A) all of the conditions to Closing set forth in Sections 7.1 and 7.2 have been satisfied (other than those conditions that, by their terms, cannot be satisfied until the Closing but which are reasonably expected to be satisfied at the Closing), (B) the Company has confirmed in a written notice to Parent that it is ready, willing and able to perform its obligations to effect the Contemplated Transactions and (C) Parent and Merger Subs fails to fulfill their obligation to effect the Contemplated Transactions within two (2) Business Days of such written notice pursuant to the immediately preceding clause (C).

8.2 Effect of Termination. In the event of termination by the Company or Parent pursuant to Section 8.1, this Agreement will become void and have no effect, the Contemplated Transactions will be terminated without further action by any Party, and except as provided in this Section 8.2 or Section 8.3, there will be no Liability on the part of any Party to any other Party. If this Agreement is terminated as provided herein:

(a) all confidential information received by Parent or Merger Subs with respect to the Business will be treated in accordance with the Confidentiality Agreement, which will remain in full force and effect notwithstanding the termination of this Agreement;

(b) the obligations of the Parties set forth in Section 5.13, this Section 8.2, Section 8.3 and Article IX will remain in full force and effect; and

(c) subject to Section 8.3, the termination of this Agreement will relieve any Party from Liability for its breach of this Agreement that occurred prior to such termination, other than in the case of Fraud or a material breach of this Agreement that is the consequence of an act or omission by such Party with the actual knowledge that the taking of such act or failure to take such action would be a material breach of this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE IX
MISCELLANEOUS**

9.1 Shareholder Representative.

(a) By virtue of the approval and adoption of this Agreement by the Shareholders and delivery of the Written Consent, and without the need for further action by any Shareholder, each of the

Shareholders will be deemed to have agreed to irrevocably appoint Mr. Timothy Mellon (which, by execution of this Agreement, hereby accepts such appointment) as his sole and exclusive agent, attorney-in-fact and as Shareholder Representative, for and on behalf of the Shareholders with full power of substitution, to give and receive notices and communications hereunder and to take any and all action permitted or required for the Shareholders or Shareholder Representative under this Agreement, including (i) to execute and deliver on behalf of the Shareholders any amendment, consent or waiver under this Agreement and the Ancillary Documents, (ii) to assert, and to agree to resolution of, all claims and disputes hereunder or thereunder, including under Section 2.8 and Section 9.2 hereof, (iii) to retain legal counsel and other professional services, at the expense of the Shareholders, in connection with the performance by the Shareholder Representative of this Agreement and the Ancillary Documents, (iv) to execute and deliver on the Shareholders' behalf all documents and instruments which may be executed and delivered pursuant to this Agreement and the Ancillary Documents, (v) to make and receive notices and other communications pursuant to this Agreement and the Ancillary Documents and service of process in any Action arising out of or related to this Agreement and the Ancillary Documents, (vi) to negotiate, settle or compromise any Action arising out of or related to this Agreement or the Ancillary Documents or any of the transactions hereunder or thereunder, including to take any action (or determine not to take action) in connection with the defense, prosecution, settlement, compromise or other resolution of any claim for indemnification pursuant to Section 9.2, and (vii) to do each and every act and exercise all rights that are either (x) necessary or appropriate in the judgment of the Shareholder Representative for the accomplishment of the foregoing or (y) mandated or permitted by the terms of this Agreement or the Ancillary Documents. For the avoidance of doubt, none of the provisions of this Section 9.1 shall serve to authorize, appoint or empower the Shareholder Representative as the representative or exclusive agent of the Shareholders with respect to the Support Agreement (or with respect to any rights, obligations or actions to be taken thereunder). The power of attorney granted in this Section 9.1 is coupled with an interest and is irrevocable, may be delegated by the Shareholder Representative and shall survive the death or incapacity of each Shareholder. The Person appointed as Shareholder Representative may be changed by the Shareholders by unanimous agreement from time to time. Notwithstanding the foregoing, in the event of a resignation of Shareholder Representative or other vacancy in the position of Shareholder Representative, such vacancy may be filled by a majority vote of the other Shareholders. Neither the removal of, nor the appointment of a successor to, the Shareholder Representative shall affect in any manner the validity or enforceability of any actions taken or agreements, understandings or commitments entered into by the prior Shareholder Representative, which shall continue to be effective and binding on the Shareholders. No bond will be required of Shareholder Representative, and Shareholder Representative will not receive any compensation for his services. Notices or communications to or from Shareholder Representative will constitute notice to or from the Shareholders. For the avoidance of doubt, none of the provisions of this Section 9.1 shall serve to authorize, appoint or empower the Shareholder Representative as the representative or exclusive agent of the Shareholders with respect to the Support Agreement (or with respect to any rights, obligations or actions to be taken thereunder).

(b) The Shareholder Representative will not be liable to the Shareholders for any act done or omitted hereunder as Shareholder Representative while acting in good faith and without gross negligence or willful misconduct. The Shareholders (in accordance with the Allocation Statement) will indemnify Shareholder Representative and hold the Shareholder Representative harmless against any and all losses, costs, or expenses arising out of or in connection with the acceptance or administration of

Shareholder Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by Shareholder Representative ("Shareholder Representative Expenses"); *provided*, that in the event that any such Shareholder Representative Expense is finally adjudicated to have arisen from the bad faith, gross negligence or willful misconduct of Shareholder Representative, Shareholder Representative will reimburse the other Shareholders their proportionate amount of such Shareholder Representative Expense attributable to such bad faith, gross negligence or willful misconduct. A decision, act, consent or instruction of Shareholder Representative, including an amendment, extension or waiver of this Agreement, will constitute a decision of the Shareholders and will be final, conclusive and binding upon the Shareholders; and Parent and Merger Subs may rely upon any such decision, act, consent or instruction of the Shareholder Representative and the Shareholders will indemnify and hold Parent harmless in accordance with the Allocation Statement from any action taken by Parent and Merger Subs in accordance with instructions given by the Shareholder Representative. Parent and Merger Subs are hereby relieved from any liability to any Person for any acts or omissions by it in accordance with such decision, act, consent or instruction of Shareholder Representative or the failure of the Shareholder Representative to act in accordance with this Agreement, including any act or omission by Shareholder Representative with respect to the distribution of moneys to the Shareholders.

9.2 Non-Survival of Representations, Warranties; Indemnification.

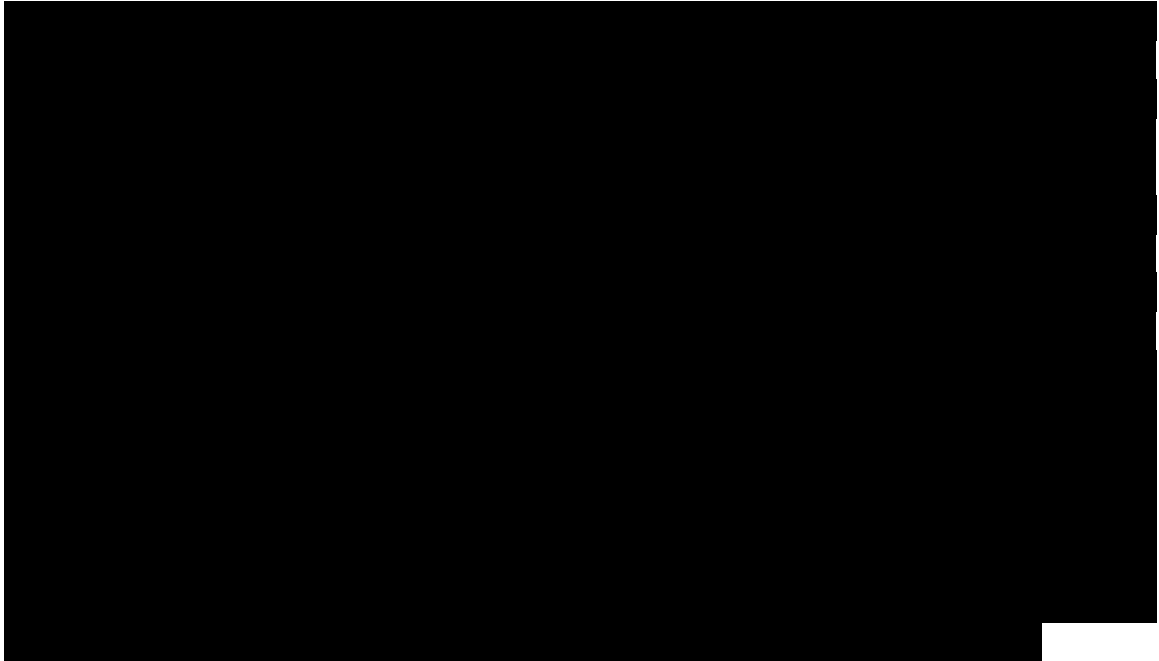
(a) None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants, or agreements, shall survive the Closing Date, except for (i) Fraud, for which Shareholders shall be liable, in the case of Fraud by the Company; (ii) those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing Date which shall survive until fully performed in accordance with their respective terms; and (iii) those covenants and agreements contained in this Article IX.

(b) Effective at and after the Closing, the Shareholders each (severally, in accordance with the Allocation Statement, and not jointly) hereby indemnify Parent, its Affiliates (including the Surviving Corporation and the Acquired Entities), and their respective officers, directors, managers, employees, agents, successors and assigns (collectively, "Parent Indemnified Parties") against and agrees to hold each of them harmless from any and all Damages incurred or suffered by any Parent Indemnified Party arising out of:

(i) any Indemnified Taxes;

(ii) any Liabilities (including Liabilities arising under or related to Environmental Laws or Hazardous Substances) to the extent related to any of the Excluded Entities or their respective businesses or operations; and

(iii)



(c) Parent agrees to give prompt notice in writing to the Shareholder Representative of the assertion of any claim or the commencement of any suit, action or proceeding by any third party in respect of which indemnity may be sought under Section 9.2(b) (“Third Party Claim”). Such notice shall set forth in reasonable detail such Third Party Claim and the basis for indemnification (taking into account the information then available to the Parent and applicable Parent Indemnified Parties). The failure to so notify the Shareholder Representative shall not relieve the Shareholders of their obligations hereunder, except to the extent such failure shall have prejudiced the Shareholders.

(d) The Shareholder Representative shall be entitled to control and appoint lead counsel for defense of any Third Party Claim, in each case at its own expense, subject to the limitations set forth in Section 9.2(e), (f) and (g).

(e) The Shareholder Representative shall not be entitled to assume or maintain control of the defense of such Third Party Claim and shall pay the fees and expenses of counsel retained by the Parent Indemnified Party if (i) the Third Party Claim relates to or arises in connection with (A) any criminal proceeding, action, indictment, allegation or investigation or (B) any proceeding, action or investigation by the STB, (ii) the Third Party Claim seeks an injunction or other equitable relief against a Parent Indemnified Party or any of its Affiliates that would restrict or otherwise affect the operation of its business in any material respect, (iii) the Shareholder Representative has failed or is failing to diligently defend or resolve the Third Party Claim or (iv) the Third Party Claim is brought by NS or any of its Affiliates. If any Parent Indemnified Party is entitled to control the defense of any Third Party Claim (including pursuant to the foregoing exceptions set forth in this Section 9.2(e)), Parent shall exercise such control on behalf of such Parent Indemnified Party, and Parent shall obtain the prior written consent of the Shareholder Representative before entering into any settlement of such Third Party Claim, which consent shall not be unreasonably withheld, delayed or conditioned (unless, in the case of any criminal proceeding regarding Indemnified Taxes, such settlement does not provide for monetary penalties, fines or other monetary

damages in excess of [REDACTED], in which case the consent of the Shareholder Representative shall not be required).

(f) If the Shareholder Representative shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 9.2, the Shareholder Representative shall obtain the prior written consent of the Parent before entering into any settlement of such Third Party Claim, which consent shall not be unreasonably withheld, delayed or conditioned, *provided* that consent of the Parent shall not be required for any such settlement if (i) the sole relief provided is monetary damages that are paid in full by the Shareholders or the Excluded Entities, (ii) such settlement does not permit any order, injunction or other equitable relief to be entered, directly or indirectly, against the affected Parent Indemnified Parties or any of their Affiliates, (iii) such settlement includes an irrevocable and unconditional release of such Parent Indemnified Parties and their Affiliates from all Liability on claims that are the subject matter of such Third Party Claim and (iv) such settlement does not include any statement as to or any admission of fault or culpability on behalf of any Parent Indemnified Party or any of its Affiliates.

(g) In circumstances where the Shareholder Representative is controlling the defense of a Third Party Claim in accordance with this Section 9.2, Parent and the affected Parent Indemnified Parties shall be entitled to participate in the defense of any Third Party Claim and to employ separate counsel of their choice for such purpose, in which case the fees and expenses of such separate counsel shall be borne by the Parent Indemnified Parties; *provided* that in such event the Shareholders shall pay the fees and expenses of such separate counsel (i) incurred by a Parent Indemnified Party prior to the date the Shareholder Representative assumes control of the defense of the Third Party Claim or (ii) if the Parent Indemnified Party shall reasonably conclude that (A) there is a material conflict of interest between the Shareholders or any of their Affiliates and the Parent Indemnified Party in the conduct of the defense of such Third Party Claim or (B) there are specific defenses or claims available to the Parent Indemnified Party which are different from or additional to those available to the Shareholders or any of their Affiliates and which could be materially adverse to the Shareholders or any of their Affiliates. In circumstances where the Shareholder Representative is controlling the defense of a Third Party Claim in accordance with this Section 9.2, the Shareholder Representative shall keep Parent and the affected Parent Indemnified Parties reasonably informed with respect to such Third Party Claim and cooperate with Parent and the Parent Indemnified Parties in connection therewith.

(h) Each Party shall cooperate, and cause its Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

(i) In the event a Parent Indemnified Party has a claim for indemnity under this Section 9.2 against the Shareholders that does not involve a Third Party Claim, the Parent Indemnified Party agrees to give prompt notice in writing of such claim to the Shareholder Representative. Such notice shall set forth in reasonable detail such claim and the basis for indemnification (taking into account the information then available to the Parent Indemnified Party). The failure to so notify the Shareholder Representative shall not relieve the Shareholders of their obligations hereunder, except to the extent such failure shall have prejudiced the Shareholders. If the Shareholder Representative notifies the Parent Indemnified Party within thirty (30) days following the receipt of a notice with respect to any such claim

that the Shareholder Representative disputes the Shareholders' indemnity obligation to the Parent Indemnified Party for any Damages with respect to such claim, the parties shall proceed in good faith to negotiate a resolution of such dispute and, if not resolved through negotiations, such dispute shall be resolved in accordance with Section 9.10.

(j) The amount of any Damages payable under this Section 9.2 by the Shareholders shall be net of any amounts actually recovered by the Parent Indemnified Parties under applicable insurance policies, or from any other Person alleged to be responsible therefor; *provided* that nothing herein shall require a Parent Indemnified Party to take any action to recover or realize any such amounts. The Shareholders shall not be liable under this Section 9.2 for any Damages relating to any matter to the extent that the amount of such Damages reduced the Final Merger Consideration.

(k) Parent shall make, or cause the applicable Parent Indemnified Party to make, commercially reasonable efforts to mitigate any Damages payable under this Section 9.2.

(l) No right of indemnification hereunder shall be limited by reason of any investigation or audit conducted before or after the Closing or the knowledge of any Party of any breach of a representation, warranty, covenant or agreement by the other party at any time, or the decision of any Party to complete the Closing.

9.3 Environmental Liabilities Associated with Identified CERCLA Sites. The Parties agree that Remedial Action Liabilities from and after the Closing with respect to the Identified CERCLA Sites shall be addressed in the manner set forth in this Section 9.3.

(a) The Parties will establish the Environmental Escrow Account at the Closing pursuant to this Agreement and the Escrow Agreement through the deposit of the Environmental Escrow Amount for the performance and payment, pursuant to the terms and conditions of this Section 9.3, of all actions required to obtain a Final Resolution of the Remedial Action Liabilities with respect to the Identified CERCLA Sites.

(b) The eligible uses of the Environmental Escrow Account ("Eligible Uses") shall be for: (i) actual costs incurred in the defense against Remedial Action Liability claims related to the Identified CERCLA Sites (including attorney fees, Remediation Manager and other consultant and expert fees, investigation costs and other pre-litigation and litigation costs); (ii) actual costs for the negotiation of Remedial Action Settlements; (iii) any amounts required under any Remedial Action Settlement or Governmental Authority-approved Remedial Action or remedial design, regardless of the timing of when such amounts are required to be paid; (iv) Damages for Remedial Action Liabilities as determined and finally adjudicated by a final and unappealed order of a court of competent jurisdiction (including related attorney fees, Remediation Manager and other consultant and expert fees, investigation costs and other pre-litigation and litigation costs in connection with obtaining such order); (iv) the actual costs of the management and performance of any remedial investigations, feasibility studies, risk assessments, and the design, construction and implementation of any Remedial Actions at the Identified CERCLA Sites; and (v) actual costs related to a Remedial Action (including any removal action or remedial design under CERCLA) approved by the applicable Governmental Authority for such Identified CERCLA Site.

(c) The Environmental Escrow Account shall not be utilized for, and any Damages that may be otherwise be claimed by the Parent or Acquired Entity PRP shall be reduced to the extent that, any such Damages result from (i) the willful misconduct or gross negligence of Parent or Acquired Entity PRP, their Affiliates, or their respective officers, directors, managers, employees or agents occurring after Closing; or (ii) any change in the use of any property at the Identified CERCLA Sites by Parent or any Acquired Entity to a use other than a railroad, commercial or industrial use.

(d) The Acquired Entity PRP shall engage ERM or another qualified and experienced environmental consultant mutually agreed upon by the Shareholder Representative and Parent (which mutual agreement shall not be unreasonably withheld, conditioned or delayed) (the “Remediation Manager”) to manage and oversee, with the assistance of legal counsel where necessary, the response to Remedial Action Liability claims and the performance of any Remedial Actions required to be performed by the Acquired Entity PRPs at the Identified CERCLA Sites.

(e) The Acquired Entity PRP and Remediation Manager shall have control with respect to responding to any claims relating to Remedial Action Liabilities related to the Identified CERCLA Sites, including any negotiations with the USEPA or other Governmental Authority with respect to such Remedial Action Liabilities and, where applicable, the performance by the Remediation Manager of any Remedial Actions at the Identified CERCLA Sites. The Parties agree to the following procedures:

(i) The Acquired Entity PRP or Remediation Manager shall provide the Shareholder Representative for review and comment drafts of any settlement proposals, consent orders, consent decrees, proposed work plans, reports or other submissions that the Acquired Entity PRP or Remediation Manager intends to deliver or submit to a Governmental Authority prior to said submission. The Shareholder Representative shall have thirty (30) days or such shorter time as is reasonable under the circumstances to provide comments to the Acquired Entity PRP and Remediation Manager regarding any such draft submissions. Such review shall be at the sole expense of the Shareholder Representative. The Acquired Entity PRP and Remediation Manager shall provide good faith consideration to the comments provided by the Shareholder Representative and shall incorporate all such comments that the Acquired Entity PRP and Remediation Manager determine in good faith are reasonable.

(ii) The Acquired Entity PRP and Remediation Manager shall promptly provide copies to the Shareholder Representative of all written notices, final submissions, final work plans and final reports, and any other documents or communications to or from any Governmental Authority concerning the Remedial Actions at the Identified CERCLA Sites.

(iii) The Shareholder Representative may, solely at their own expense, hire their own consultants, attorneys or other professionals to monitor the Remedial Action, including any field work.

(iv) To the extent any field work at the Identified CERCLA Sites is being performed by the Acquired Entity PRP or the Remediation Manager, such parties shall afford the Shareholder Representative the opportunity to collect split samples of any samples collected by the Acquired Entity PRP, the Remediation Manager or their representatives.

(v) The Acquired Entity PRP or Remediation Manager shall provide the Shareholder Representative with notice of any meetings with any Governmental Authority concerning the Remedial Action Liability as the Identified CERCLA Sites. To the extent permitted under applicable Law, the Shareholder Representative shall have the right to have its representatives or consultants attend such meeting, *provided* that the costs related to such attendance shall be the sole responsibility of Shareholder Representative.

(vi) In communications with any Governmental Authority or other Person regarding any Remedial Action Liabilities relating to the Identified CERCLA Sites, Parent, the Acquired Entity PRPs, the Remediation Manager, the Shareholder Representative and their representatives shall not advocate or take any position that would materially hinder or render materially more difficult or costly the Remedial Action to be undertaken or that is materially inconsistent with obtaining completion of the Remedial Action consistent with the terms of this Section 9.3.

(f) The Acquired Entity PRPs shall use all commercially reasonable efforts to negotiate settlements with the USEPA and other Governmental Authorities and/or other potentially responsible parties for resolution of Remedial Action Liabilities related to the Identified CERCLA Sites (“Remedial Action Settlements”), subject to the terms of this Section 9.3. Such Remedial Action Settlements may be in the form of an administrative order on consent, a consent order and agreement, a consent decree or other agreement. Any such Remedial Action Settlement provided that the Remedial Action Settlement must be consistent with the provisions of Sections 9.3(g)-(h) below.

(g) The Acquired Entity PRPs and Remediation Manager shall use all commercially reasonable efforts to seek and negotiate, and the Shareholder Representative agrees to support, the selection and implementation of Remedial Actions at Identified CERCLA Sites conducted in a cost-effective manner using commercially reasonable methods for investigations, corrective action, remediation and containment to achieve the Applicable Remediation Standards using, where possible, risk-based standards, engineering, use or institutional controls or deed or other restrictions applicable to railroad, industrial or commercial properties; provided that such measures will not materially interfere with the use of any properties owned, leased or operated by Parent or any Acquired Entity PRP within the Identified CERCLA Sites for railroad, commercial or industrial uses.

(h) Except in the case of Fraud and those matters subject to the Shareholders’ obligations under Section 9.2(b)(ii), from the date of the Closing, (i) the Shareholders’ sole obligations pursuant to this Agreement with respect to any Liabilities arising under Environmental Law or related to Hazardous Substances shall be to provide for the deposit of the Environmental Escrow Amount in the Environmental Escrow Account; and (ii) Parent on behalf of itself and each Parent Related Entity does hereby release, hold harmless and forever discharge the Shareholders and Shareholder Representative from any and all Liabilities arising under Environmental Laws or related to Hazardous Substances of any kind or character, whether predicated on common law, statute, strict liability, or otherwise, whether known or unknown, that it now has, or in the future may have conferred upon it, by virtue of any statute or common law principle.

9.4 Environmental Escrow Account Disbursement Procedures.

(a) From time to time, and in any event not more often than once per calendar month, any Acquired Entity PRP shall be entitled to submit a Disbursement Request to the Shareholder Representative. For purposes hereof, a “Disbursement Request” shall mean a written request for disbursement of a portion of the Environmental Escrow Funds from the Environmental Escrow Account to pay for, or to reimburse any Acquired Entity PRP for payments previously made by or on behalf of such Acquired Entity PRP with respect to, the Eligible Uses, and shall contain the following: (1) a statement of the amount of the requested disbursement (the “Requested Disbursement Amount”) and (2) documentation supporting the amount of the Disbursement Request, including paid third party invoices and/or receipts for such amount or such other reasonable supporting documentation relating to the cost or expense for which such disbursement is sought (the “Supporting Documentation”).

(b) Shareholder Representative shall have until 3:00 p.m. (Boston, Massachusetts time) on the tenth (10th) Business Day following its receipt of a Disbursement Request (each such period of time being referred to as a “Review Period”) to provide the relevant Acquired Entity PRP with written notice approving or disapproving, in whole or in part, the applicable Requested Disbursement Amount (each, a “Disbursement Response”). Shareholder Representative shall not disapprove all or any part of any Disbursement Request unless and to the extent (1) the claimed amounts are not Eligible Uses, (2) the Eligible Use for which such disbursement is sought has been shown to have been performed in manner which does not comply with Applicable Remediation Standards, or (3) all or part of the Supporting Documentation is inaccurate or omitted from the Disbursement Request (*provided* that the relevant Acquired Entity PRP shall have the right to cure such inaccuracy or omission as described below). If Shareholder Representative disapproves of any Requested Disbursement Amount, the Disbursement Response must contain a reasonably detailed description of (a) the item(s) in the Disbursement Request of which Shareholder Representative disapproves (the “Disapproved Representative Items”) and the reason(s) for Shareholder Representative’s disapproval, and (b) the dollar amount requested in the applicable Disbursement Request applicable to the Disapproved Representative Items (the “Disapproved Disbursement Amount”). Notwithstanding the foregoing, if the Disbursement Response disapproves of all or a portion of the Requested Disbursement Amount because all or part of the Supporting Documentation is inaccurate or omitted from the Disbursement Request, then the relevant Acquired Entity PRP shall be entitled to amend and resubmit such Disbursement Request (a “Resubmitted Disbursement Request”) to correct any alleged inaccuracies and include any allegedly omitted Supporting Documents within ten (10) days following receipt of the Disbursement Response, in which case Shareholder Representative shall deliver an amended Disbursement Response to the relevant Acquired Entity PRP within five (5) business days following receipt of the amended and resubmitted Disbursement Request (the “Resubmission Review Period”).

(c) The Parent and Shareholder Representative, through their respective Authorized Representatives (as defined in the Escrow Agreement) shall execute and deliver to the Escrow Agent a Joint Release Notice (as defined in the Escrow Agreement) directing the Escrow Agent to disburse as to each Disbursement Request:

(i) The entire Requested Disbursement Amount in accordance with the applicable Disbursement Request if the Acquired Entity PRP (1) does not receive the Shareholder Representative’s Disbursement Response within the Review Period, in which case the Shareholder Representative shall be deemed to have approved the disbursement of the entire Requested

Disbursement Amount, or (2) receives, during the Review Period, the Shareholder Representative's Disbursement Response approving disbursement of the entire Requested Disbursement Amount.

(ii) With respect to a Disbursement Request subject to a Disbursement Response delivered during the Review Period that identifies a Disapproved Disbursement Amount, an amount equal to the difference between the Requested Disbursement Amount and the Disapproved Disbursement Amount described in a Shareholder Representative's Disbursement Response received by the Acquired Entity PRP during the Review Period. The Acquired Entity PRP shall be entitled to include in any subsequent Disbursement Request a request for disbursement of Escrow Funds for any unpaid disapproved amount from a previous Disbursement Request.

(iii) With respect to any Disapproved Disbursement Amount for which the Acquired Entity has submitted a Resubmitted Disbursement Request:

(A) The entire Requested Disbursement Amount set forth in the Resubmitted Disbursement Request if the Acquired Entity PRP (1) does not receive the Shareholder Representative's Disbursement Response within the Resubmission Review Period, in which case the Shareholder Representative shall be deemed to have approved the disbursement of the Requested Disbursement Amount, or (2) receives, during the Review Period, the Shareholder Representative's Disbursement Response approving disbursement of the entire Requested Disbursement Amount.

(B) With respect to a Resubmitted Disbursement Request subject to a timely Disbursement Response delivered within the Resubmission Review Period that identifies a Disapproved Disbursement Amount, an amount equal to the difference between the Requested Disbursement Amount and the Disapproved Disbursement Amount described in a Shareholder Representative's Disbursement Response to the Resubmitted Disbursement Request.

(iv) In the event that the Acquired Entity PRP and the Shareholder Representative subsequently agree to, or a court of competent jurisdiction by a final unappealed order determines, the amount due and owing the Acquired Entity PRP, the amount so agreed to or determined that has not otherwise been disbursed pursuant to this Section 9.4(c).

(d) The Shareholder Representative may submit a Final Disbursement Request to the Parent, for review and approval by the Parent, if the Final Disbursement Conditions (as defined below) have been satisfied. The Final Disbursement Request shall include documentation evidencing a Final Resolution of all Remedial Action Liabilities at all Identified CERCLA Sites and (ii) the payment of all amounts due and owing to the Parent and Acquired Entity PRPs for Eligible Uses incurred to achieve such Final Resolution as to all Identified CERCLA Sites pursuant to the terms of Section 9.3 (the "Final Disbursement Conditions"). The Parent shall have the right to disapprove a Final Disbursement Request only on the basis that the Final Disbursement Conditions have not been satisfied, in which case the Parent's notice to Shareholder Representative disapproving the Final Disbursement Request shall specifically describe and provide supporting documentation for any claim that the Final Disbursement Conditions have not been satisfied. Upon the approval by the Parent of a Final Disbursement Request, or in the event of a

dispute, a final unappealed order issued by a court of competent jurisdiction determining that the Final Disbursement Conditions have been satisfied, the Parent and Shareholder Representative, through their respective Authorized Representatives, shall execute and deliver to the Escrow Agent a Joint Release Notice directing the Escrow Agent to make a final disbursement of any remaining Environmental Escrow Funds to the Shareholder Representative to be shared among Shareholders in accordance with the Allocation Statement.

(e) If not otherwise resolved between the Shareholder Representative and the relevant Acquired Entity PRP or Parent pursuant to the provisions of this Section 9.4, any dispute between the parties concerning a Disbursement Request, a Disbursement Response, or the Final Disbursement Conditions shall be resolved by a court of competent jurisdiction as provided in Section 9.10 of this Agreement.

9.5 Assignment. This Agreement and the rights hereunder will not be assignable or transferable by any Party hereto except as expressly contemplated herein without the prior written consent of the other Parties hereto except Parent may transfer or assign its rights, interests or obligations under this Agreement, in whole or in part, (i) to one or more of its Affiliates or (ii) following the Closing, to any Person; *provided* that no such transfer or assignment shall relieve Parent of its obligations hereunder or enlarge, alter or change any obligation of any other party hereto or due to the Shareholders. Notwithstanding the above, this Agreement will inure to the benefit of, and be binding upon and enforceable against, the respective successors and permitted assigns of the Parties.

9.6 No Third-Party Beneficiaries. Except for the provisions of Section 5.3, Section 5.14, Section 8.2, Section 8.3 and Section 9.2, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein expressed or implied will give or be construed to give to any Person (including Employees), other than the Parties and such respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.7 Expenses. Except as otherwise provided herein, the Company, the Shareholder Representative, Parent and Merger Subs will each be liable for their own respective costs and expenses incurred in connection with the negotiation, preparation, execution or performance of this Agreement, whether or not the Closing will have occurred. Parent will be responsible for all of its costs and expenses incurred in connection with obtaining STB Approval (including all filing fees relating thereto).

9.8 Amendment and Modification. This Agreement may not be amended except by an instrument or instruments in writing signed and delivered on behalf of each of the Parties hereto. Any Party may, only by an instrument in writing, waive compliance by any other Party to this Agreement with any term or provision of this Agreement on the part of such other Party to be performed or complied with.

9.9 Notices. All notices and other communications hereunder will be in writing and will be deemed given (a) on the date of delivery if delivered personally, (b) on the date of transmission if sent via email or facsimile transmission to the email address or facsimile number given below, with confirmation of delivery, (c) on the Business Day after delivery to a reputable nationally recognized overnight courier service or (d) upon receipt after being mailed by registered or certified mail (return receipt requested) to the Parties at the following addresses:

- (i) If to Parent or the Company after Closing, to:

CSX Corporation
500 Water Street
Jacksonville, FL 32202

Attention: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

With required copies to (which will not constitute notice):

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017

Attention: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

- (ii) If to the Company prior to Closing, to:

Pan Am Systems, Inc.
c/o Pan Am Railways, Inc.
1700 Iron Horse Park
North Billerica, MA 01862

Attn. [REDACTED]

Fax: [REDACTED]

Phone: [REDACTED]

REDACTED – TO BE PLACED ON PUBLIC FILE

With a required copy (which will not constitute notice) to:

K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Attention: [REDACTED]

E-mail: [REDACTED]

Facsimile: [REDACTED]

K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Attention: [REDACTED]

E-mail: [REDACTED]

Facsimile: [REDACTED]

(iii) If to Shareholder Representative:

Pan Am Systems, Inc.
c/o Pan Am Railways, Inc.
1700 Iron Horse Park
North Billerica, MA 01862
Attn. [REDACTED]

Fax: [REDACTED]

Phone: [REDACTED]

With a required copy (which will not constitute notice) to:

K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Attention: [REDACTED]

E-mail: [REDACTED]

Facsimile: [REDACTED]

K&L Gates LLP
1601 K Street, NW
Washington, DC 20006

Attention: [REDACTED]

E-mail: [REDACTED]

Facsimile: [REDACTED]

Such addresses may be changed from time to time by means of a notice given in the manner provided in this Section 9.9 (*provided* that no such notice will be effective until it is received by the other Party hereto).

9.10 Governing Law.

(a) This Agreement will be governed by, and construed in accordance with, the Laws of the State of Delaware applicable to contracts executed in and to be performed in that state. Except for disputes to be resolved under Section 2.8, all Actions arising out of or relating to this Agreement will be heard and determined exclusively in a Delaware Chancery Court; *provided*, however, that if such court does not have jurisdiction over such Action, such Action will be heard and determined exclusively in any federal court located in the State of Delaware or other Delaware state court. Consistent with the preceding sentence, the Parties hereto hereby (i) submit to the exclusive jurisdiction of the Delaware Chancery Court or federal courts sitting in Delaware or other Delaware State Court for the purpose of any Action arising out of or relating to this Agreement brought by any Party and (ii) irrevocably and unconditionally waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of the Action is improper, or that this Agreement or the Contemplated Transactions may not be enforced in or by any of the above-named courts.

(b) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 9.10.

9.11 Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance will be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability will not affect the legality, validity or enforceability of any other provision hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is found by a court or other Governmental Authority of competent jurisdiction to be invalid or unenforceable, (a) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances will not be affected by such invalidity or unenforceability, nor will such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

9.12 Waiver. Waiver of any term or condition of this Agreement by any Party will be effective if in writing and will not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other term or condition of this Agreement. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or

partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

9.13 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, all of which will be considered one and the same agreement and will become effective when one or more such counterparts have been signed by each Party and delivered to the other Parties. Signatures of the Parties transmitted by facsimile or other electronic communication means will be binding and effective for all purposes.

9.14 Entire Agreement. This Agreement, including the Disclosure Schedules, Exhibits, Ancillary Documents hereto and the Confidentiality Agreement contain the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, negotiations, correspondence, undertakings and understandings, oral or written, relating to such subject matter.

9.15 Interpretation. All references to immediately available funds or dollar amounts contained in this Agreement will mean United States dollars. The table of contents and headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. References in this Agreement to any gender include references to all genders, and references to the singular include references to the plural and vice versa. The words “include,” “includes” and “including” when used in this Agreement will be deemed to be followed by the phrase “without limitation.” Unless the context otherwise requires, references in this Agreement to Articles, Sections, Exhibits and Disclosure Schedules will be deemed references to Articles and Sections of, and Exhibits and Disclosure Schedules to, this Agreement. Unless the context otherwise requires, the words “hereof,” “hereby” and “herein” and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement. The Parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Nothing in this Agreement will be construed to require any Party hereto to violate any Law.

9.16 Enforcement in Equity and at Law. The Parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, except as otherwise expressly provided herein, the Parties will be entitled to seek injunctive relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at Law or in equity, in each case without the need to post a bond or provide other security.

9.17 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

[SIGNATURE PAGES TO FOLLOW]

REDACTED – TO BE PLACED ON PUBLIC FILE

REDACTED – TO BE PLACED ON PUBLIC FILE

IN WITNESS WHEREOF, the Parties have caused this Agreement and Plan of Merger to be duly executed as of the date first written above.

CSX CORPORATION

BY:  _____


NAME:  _____

TITLE:  _____

747 MERGER SUB 1, INC.

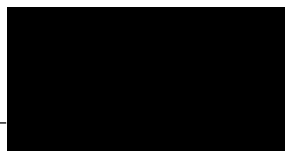
BY:  _____

NAME:  _____

TITLE:  _____

747 MERGER SUB 2, INC.

BY: _____



NAME: _____



TITLE: _____



Solely with respect to Section 5.19

Pan American World Airways, Inc.

BY: 

NAME 

TITLE: 

COMPANY

Pan Am Systems, Inc.

BY:

[REDACTED]

NAME:

[REDACTED]

TITLE:

[REDACTED]

REDACTED – TO BE PLACED ON PUBLIC FILE

SHAREHOLDER REPRESENTATIVE



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 3

Court Order

Court Order

Not applicable

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 4

Environmental Documents

Environmental Documents

Pursuant to 49 C.F.R. § 1105.6(b)(4), Environmental Assessments will normally be prepared in actions involving a merger or the acquisition of control when the proposed transaction will result in operational changes that would exceed the thresholds set out in 49 C.F.R. §§ 1105.7(e)(4) or (5). An Environmental Assessment is not required here because those thresholds will not be exceeded. As explained in the Application in response to 49 C.F.R. 1180.6(a)(8), the Proposed Transaction will not result in any new operations exceeding any of the environmental or historic limits in 49 C.F.R. §1105.7(e)(4 and 5) and 49 CFR 1105.8(b)(1 or 2). Therefore, environmental documentation is not required for this Application.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.
—CONTROL AND MERGER—
PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE
CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD,
PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD
TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND
VERMONT & MASSACHUSETTS RAILROAD COMPANY

EXHIBIT 15

Minor Transaction Operating Plan

OPERATING PLAN - MINOR

This Operating Plan is submitted in support of the application (the “Application”) of CSX Corporation (“CSXC”) and CSX Transportation, Inc. (“CSXT”) (CSXC and CSXT are collectively referred to as “CSX”), 747 Merger Sub 2, Inc., Pan Am Systems, Inc. (“Systems”), Pan Am Railways, Inc. (“PAR”), Boston and Maine Corporation (“Boston & Maine”), Maine Central Railroad Company (“Maine Central”), Northern Railroad (“Northern”), Portland Terminal Company (“Portland Terminal”), Springfield Terminal Railway Company (“Springfield Terminal”), Stony Brook Railroad Company (“Stony Brook”), and Vermont & Massachusetts Railroad Company (“V&M”) (collectively, “Applicants”), for Surface Transportation Board (“STB” or “Board”) approval of the acquisition by CSX of Systems – including its rail carrier subsidiaries, and its interest in Pan Am Southern LLC (“PAS”) – and the merger of certain Pan Am subsidiaries into CSXT (the “Proposed Transaction”).

As discussed in the Application, in a related transaction, Pittsburg & Shawmut Railroad, LLC, doing business as Berkshire & Eastern Railroad (“B&E”), a class III carrier wholly owned by Genesee & Wyoming Inc. (“GWI”) is seeking separate STB authority to operate PAS once CSX acquires Systems and Systems’ interest in PAS. In accordance with the Board’s rules, this Operating Plan describes the current operations of the rail carriers owned by Systems to be acquired and “[d]iscuss[es] any significant changes in patterns or types of service” that CSX currently expects to occur on the subject lines following consummation of the Proposed Transaction. 49 C.F.R. § 1180.8(c).

Systems is the parent company of PAR, a non-carrier whose rail carrier subsidiaries own and operate an approximately 808-route mile single unified regional freight rail network (the “PAR System”). PAR’s subsidiary Boston and Maine and Norfolk Southern Railway Company (“NSR”) jointly own PAS, which consists of an approximately 425-route mile regional freight rail network (the “PAS Network”). The PAR System and PAS transport a total of approximately 90,000 freight carloads and 83,000 intermodal and haulage units annually, and their

operations span six states across the northeast U.S. Maps of the PAR System and the PAS Network are included in Exhibit 1 of the Application. The PAR System and PAS utilize a total of approximately 1,476 railcars and 102 locomotives. The primary commodities handled include grain, sand and gravel, food products, lumber, paper and pulp, chemicals and plastics, petroleum, processed minerals, metals, scrap metal, finished automobiles, and intermodal trailers and containers.

Springfield Terminal, a PAR subsidiary, operates all of the PAR System's lines, as well as the PAS Network. Springfield Terminal leases the PAR System's lines from other PAR subsidiaries that own the lines. PAS owns or has perpetual freight easements or trackage rights over all lines in the PAS Network, and Springfield Terminal operates the PAS Network on a contract basis as the agent of PAS. No Pan Am subsidiary other than Springfield Terminal provides rail operations over the PAR System or PAS.

The Proposed Transaction will result in CSX acquiring Boston & Maine and its 50% ownership interest in PAS, and in CSX acquiring Springfield Terminal and merging that railroad into CSXT. Separately, CSXT, NSR, and GWI have entered into agreements regarding the operation of PAS that will further strengthen PAS as a viable rail route for shippers and enhance rail competition in New England. There are two agreements: (1) a Settlement Agreement between CSXT and NSR ("NSR Settlement Agreement"), which includes an Ayer Operations Protocol, Engineering Planning, and Capacity Roadmap (the "Ayer Operations Protocol"), and (2) a Term Sheet Agreement among CSXT, NSR and GWI ("Term Sheet Agreement"). These agreements are contained as exhibits to the Verified Statement of Mr. Sean Pelkey submitted with the Application.

These two agreements contemplate transactions that are integrally related to the Proposed Transaction (the "Related Transactions"), including: (1) B&E, a wholly-owned subsidiary of GWI, will enter into an agreement with PAS to operate the PAS Network on a contract basis as the agent of PAS, replacing Springfield Terminal (the "B&E/PAS Transaction"), and (2) NSR will obtain trackage rights

over existing lines owned by four carriers (CSXT, Boston & Maine, Providence & Worcester Railroad Company (a GWI subsidiary), and PAS) to allow NSR additional flexibility with respect to NSR's existing service to an intermodal facility located on the PAS Network at Ayer, MA.

Accordingly, after consummation of the Proposed Transaction and the Related Transactions, CSXT will take over operations by Springfield Terminal as lessee of the PAR System's lines, and B&E will take over operations by Springfield Terminal as contract operator of the PAS Network lines.¹

CSXT owns and operates about 20,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Québec. The CSXT network includes a rail line between the Boston, MA region and Rotterdam Junction, NY via Selkirk, NY. The PAS Patriot Corridor also connects the Boston region (via Ayer, MA) and Rotterdam Junction, NY via East Deerfield, MA. CSXT primarily interchanges traffic with Springfield Terminal/PAS at Rotterdam Junction, NY and with Springfield Terminal/PAR at Barbers Station, MA.

B&E is a class III carrier wholly owned by GWI. GWI controls four shortline rail carriers in New England, and GWI will be able to use its operating expertise and knowledge of the region to provide efficient rail service on PAS. PAS will require B&E to provide non-discriminatory service to all carriers connecting with PAS. PAS will also require B&E to set PAS rates at levels that are competitively neutral to connecting rail carriers.

¹ The Applicants anticipate consummating the Proposed Transaction and the B&E/PAS transactions at the same time, subject to Board approval of each transaction. However, if the Proposed Transaction is consummated prior to the B&E/PAS transaction, CSXT, NSR, and GWI have agreed that Springfield Terminal will continue to operate PAS until B&E or another third-party operator is able to replace Springfield Terminal as the PAS operator.

As described in the Verified Statement of Dr. David Reishus included with the Application, the Proposed Transaction is an end-to-end combination of the existing CSXT and PAR System rail networks. The Proposed Transaction will result in a more efficient connection of New England rail markets with the rest of CSXT's eastern United States rail markets. It will also permit CSXT to bring its customer-oriented and reliable rail operations to New England rail users. The operation of PAS by B&E will strengthen PAS as a viable competitive alternative to CSXT for movements of traffic to and from New England.

The Proposed Transaction and the Related Transactions will not produce significant changes to the existing routes, patterns, or types of service for the PAR System, PAS, or CSXT, or redirect existing traffic over those systems. Instead, CSXT will modernize and introduce efficiencies to the PAR System's operations, emphasizing consistency, reliability, and careful data measurement and management. Operating efficiencies on the PAR System will come from decreased car cycles, fewer assets, and new synergies created from fewer handlings due to single-line service and capital improvements. B&E has agreed to "step into the shoes" of Springfield Terminal as operator of PAS, providing substantially all of the operating services that Springfield Terminal currently provides on behalf of PAS.

Additionally, the Proposed Transaction will eliminate existing interchanges between CSXT and the PAR System/Springfield Terminal, creating a direct, efficient single-line rail connection between New England and the rest of the eastern United States currently served by CSXT. Over time, these operating improvements will remove traffic from congested highways and expand market opportunities for shippers moving traffic into and out of New England. However, in the foreseeable future, rail traffic volume on the existing rail networks is not expected to change significantly.

I. Pre-Transaction Operations

A. Train Operations

As described further below, the PAR System network consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage rights route miles, in Massachusetts, Maine, New Hampshire, and Vermont. The PAS network consists of approximately 425 route miles of rail lines, including approximately 281.38 owned (including perpetual freight easement) route miles and approximately 143.62 trackage rights route miles, in Connecticut, Massachusetts, New Hampshire, New York, and Vermont.

Set forth below is a summary of train operations on the PAR System and PAS network, including a description of road trains, local trains, and yard trains. A map depicting train operations is included in Exhibit 1 to the Application. A chart listing these trains in greater detail is included below.

i. Summary of PAR System Train Operations

Springfield Terminal currently operates the following trains on the PAR System. No other PAR subsidiaries operate on the PAR System.

Road Trains:

- NMWA/WANM – between Waterville, ME and Northern Maine Jct, ME
- POWA/WAPO – between Rigby Yard, Portland, ME and Waterville, ME
- PORU/RUPO – between Rigby Yard, Portland, ME and Rumford, ME
- POAY/AYPO – between Rigby Yard, Portland, ME and Ayer, MA
- POED – Rigby Yard, Portland, ME to PAS East Deerfield Yard, MA

Local Trains: Springfield Terminal operates local trains to primarily serve rail customers, based in the following locations: Lawrence, MA; Boston, MA; Nashua, NH; Portsmouth, NH; Dover, NH; Portland, ME; Danville, ME; Rileys, ME; Waterville, ME; Shawmut, ME; and Old Town, ME.

Yard Trains: Springfield Terminal operates yard trains at Rigby Yard, Portland, ME to classify inbound and outbound rail traffic.

ii. Summary of PAS Train Operations

Springfield Terminal functions as a contract operator for PAS and serves as PAS's agent, unlike Springfield Terminal's role as the lessee and operating carrier of the PAR System. NSR has trackage rights over the PAS line between Mechanicville, NY and Ayer, MA, but Springfield Terminal currently operates NSR trains over that segment pursuant to a haulage agreement between PAS and NSR. Springfield Terminal currently operates the following trains on the PAS network:

Road Trains:

- RJED/EDRJ – between Rotterdam Jct, NY and East Deerfield, MA
- EDPL/PLED – between East Deerfield, MA and Plainville, CT
- EDPO – originates at East Deerfield, MA and terminates at PAR Rigby Yard, Portland, ME
- BFPO – unit slurry train received from the VTR interchange at Bellows Falls, VT, to Portland, ME
- RJAY/AYRJ – unit grain trains (as needed) between Rotterdam Jct, NY and Ayer, MA { [REDACTED] }
- NSR trains 16R/11R – between Mohawk, NY and East Deerfield, MA
- NSR intermodal trains 22K/23K – between Mechanicville, NY and Ayer, MA

Local Trains: Springfield Terminal, on behalf of PAS, operates local trains to primarily serve rail customers, based in the following locations: Ayer, MA; Fitchburg, MA; East Deerfield, MA; Plainville, CT; North Adams, MA; Mechanicville, NY; and Rotterdam, NY.

Yard Trains: Springfield Terminal, on behalf of PAS, operates yard trains at East Deerfield, MA to classify inbound and outbound rail traffic (operating hump yard).

Table 1: PAR and PAS Operations

| Train | On Duty | Arrival | DOS | Origin | Destination | Pickup | Setoff | Crew Change | Direction | RR |
|-------|---------|---------|-----------------|---------------|---------------|---------------------------------------|--|--------------------|-----------|--------|
| POAY | 0100 | 1900 | 7 DOW | PORTLAND | AYER | Lowell 1000 | - | Lowell 1600 | WEST | Pan Am |
| AYPO | 0200 | 1200 | 7 DOW | AYER | PORTLAND | - | - | Lowell 0330 | EAST | Pan Am |
| PORU | 0700 | 2330 | EVERY OTHER DAY | PORTLAND | RUMFORD | N/ Leeds 1400 | N/ Leeds 1400, Riley's 1615, Dixfield 2145 | Riley's 1900 | EAST | Pan Am |
| WANM | 1000 | 1800 | MTWTF | WATERVILLE | N. ME JCT. | - | - | - | EAST | Pan Am |
| 23K | 1200 | 2200 | 7 DOW | AYER | MECHANICVILLE | - | - | - | WEST | PAS |
| EDRJ | 1300 | 0400 | Sa,M,W | DEERFIELD | ROTTERDAM | Hoosic Jct. 2100 | - | Mechanicville 2359 | WEST | PAS |
| RJED | 1300 | 0100 | Su,Tu | ROTTERDAM | DEERFIELD | - | - | - | EAST | PAS |
| POED | 1400 | 0900 | 7 DOW | PORTLAND | DEERFIELD | Lowell 2330, Ayer, Fitchburg, Gardner | Dover, Lawrence 2100 | Lowell 2330 | WEST | Both |
| 22K | 1500 | 0500 | 7 DOW | MECHANICVILLE | AYER | - | - | Gardner 0300 | WEST | PAS |
| BFPO | 1500 | 2300 | Sa | BELLOW FALLS | PORTLAND | - | - | - | EAST | PAS |
| EDBF | 1600 | 2100 | MTWTF | DEERFIELD | BELLOWS FALLS | - | Brattleboro | - | WEST | PAS |
| RUPO | 1900 | 1700 | EVERY OTHER DAY | RUMFORD | PORTLAND | Riley's 0400, Danville 1300 | Danville 1300 | Riley's 0700 | WEST | Pan Am |
| POWA | 1930 | 0530 | 7 DOW | PORTLAND | WATERVILLE | - | Danville 2300 | Leeds Jct. 0200 | EAST | Pan Am |
| EDPL | 2000 | 0700 | M | DEERFIELD | PLAINVILLE | - | Hartford | - | WEST | PAS |
| WAPO | 2000 | 0600 | 7 DOW | WATERVILLE | PORTLAND | - | - | - | WEST | Pan Am |
| PLED | 2000 | 0800 | F | PLAINVILLE | DEERFIELD | Hartford | - | - | EAST | PAS |
| BFED | 2100 | 0200 | TWTFs | BELLOWS FALLS | DEERFIELD | Brattleboro | - | - | EAST | PAS |
| 11R | 2100 | 0900 | 7 DOW | DEERFIELD | MOHAWK | Hoosic Jct. 0300 | Hoosic Jct. 0300 | - | WEST | PAS |
| 16R | 2100 | 0900 | 7 DOW | MOHAWK | DEERFIELD | - | Hoosic Jct. 0230 | - | EAST | PAS |
| NMWA | 2200 | 0800 | MTWTF | NO ME JCT | WATERVILLE | - | - | - | WEST | Pan Am |
| EDPO | 2300 | 2300 | 7 DOW | DEERFIELD | PORTLAND | Lawrence 1600 | Gardner, Fitchburg, Ayer, Lawrence 1600 | Lowell 0800 | EAST | Both |

Traffic averages for the PAR and PAS networks in 2020 are shown in Table 2 below.

Table 2: 2020 Traffic Averages

| | Train Count | Avg Loaded | Avg Empty | Avg Total | Avg Tons | Avg Length |
|---------------|-------------|------------|-----------|-----------|----------|------------|
| PAR/ST | 1,870 | 32 | 28 | 60 | 5,359 | 3,811 |
| PAS | 1,270 | 31 | 24 | 55 | 5,337 | 4,414 |

iii. Description of the PAR System Lines

The PAR System network consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight

easement) route miles and approximately 83.62 trackage rights route miles, in Massachusetts, Maine, New Hampshire, and Vermont. The PAR System is a key conduit for rail freight originating and terminating in the densely populated Northeast U.S. region, and it serves as a destination point for trade flows into Portland, ME, Boston, MA, and smaller metropolitan areas in New England. In 2019, the PAR System moved 51,170 freight carloads, representing 98% of its gross revenue for the year, and 5,054 intermodal units, representing 2% of its gross revenue. Various PAR subsidiaries own the PAR System's rail lines, and Springfield Terminal, another PAR subsidiary, leases the lines from the PAR subsidiaries and operates the PAR System.

Boston & Maine, a subsidiary of PAR, owns approximately 144.18 route miles of main line track, which includes: 1) a rail line extending from the Massachusetts state line to Rigby, ME, a distance of approximately 74.82 route miles; 2) a rail line extending from Barbers Station, MA to Harvard, MA, a distance of approximately 22.87 route miles; 3) a rail line extending from the Massachusetts state line to Concord, NH, a distance of approximately 39.42 route miles; and 4) a rail line extending from Bleachery, MA to Lowell Junction, MA, a distance of approximately 7.07 route miles. Boston & Maine owns perpetual freight easements over various segments of track owned by the Massachusetts Bay Transportation Authority ("MBTA") in eastern Massachusetts, totaling 149.93 route miles. Boston & Maine also owns approximately 36.94 route miles of branch line track.

Additionally, Boston & Maine leases approximately 26.64 route miles of main line track, which includes: 1) a rail line extending from CPF 312 to CPF NC, a distance of approximately 9.63 route miles, owned by PAR subsidiary Stony Brook; 2) a rail line extending from Bleachery, MA to CPF NC, a distance of approximately 3.84 route miles, owned by the Massachusetts Department of Transportation ("MassDOT"); 3) a rail line extending from CPF NC to the Massachusetts state line, a distance of approximately 6.20 route miles, owned by MassDOT; and 4) two rail

line segments in Concord, NH and White River Junction, VT, totaling a distance of approximately 6.97 route miles, owned by PAR subsidiary Northern.

Maine Central, a subsidiary of PAR, owns approximately 191.64 route miles of main line track, which includes: 1) a rail line extending from the Portland Terminal limit to Waterville, ME, a distance of approximately 78.97 route miles; 2) a rail line extending from Waterville, ME to Bangor, ME, a distance of approximately 54.60 route miles; and 3) a rail line extending from Bangor, ME to Mattawamkeag, ME, a distance of approximately 58.06 route miles. Maine Central also owns approximately 155.26 route miles of branch line track.

Portland Terminal, a subsidiary of PAR, owns approximately 13.13 route miles of main line track, which includes: 1) approximately 5.45 route miles between Yard 8 East and the Portland/Falmouth line; 2) approximately 3.08 route miles between Yard 8 East and the So. Portland/Scarborough line; and 3) approximately 4.59 route miles between Mountain Junction and the Woodyard Switch. Portland Terminal also owns approximately 6.82 route miles of branch line track.

iv. Description of the PAS Lines

The PAS Network consists of approximately 425 route miles of rail lines, including approximately 281.38 route miles owned (including perpetual freight easement) and approximately 143.62 trackage rights route miles, in Connecticut, Massachusetts, New Hampshire, New York, and Vermont. Springfield Terminal operates PAS on a contract basis.² PAS serves as a critical link to the Boston market for intermodal and automotive trade flows. In 2019, PAS moved 37,238 freight carloads, representing {{REDACTED}} of its gross revenue for the year, and 77,883 intermodal & haulage units, representing {{REDACTED}} of its gross revenue.

The PAS lines include two main line corridors, referred to as the Patriot Corridor and the Knowledge Corridor. The PAS Patriot Corridor extends between milepost 467.4 at Mechanicville, NY and milepost 311.97 near Willows, MA, a

² See *Norfolk S. Ry. Co.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 (STB served Mar. 10, 2009).

distance of approximately 151.4 miles, inclusive of freight easement rights over MBTA between milepost 329.55 at Fitchburg, MA and milepost 313.77 at Willows, MA, a distance of approximately 15.8 miles. PAS also has trackage rights at the western end of the Patriot Corridor over the Canadian Pacific Railway Company (“CP”) Freight Subdivision between milepost 467.6 (CPF 468) at Mechanicville, NY and milepost 484.8 (CPF 485) at Mohawk Yard, NY, a distance of approximately 17.2 miles.

The PAS Knowledge Corridor extends between milepost 183.4 at White River Junction, VT and milepost 0.0 at New Haven, CT a distance of approximately 183.4 miles, inclusive of the following: 1) trackage rights over New England Central Railroad (“NECR”), a wholly-owned subsidiary of GWI, between milepost 183.4 at White River Junction, VT and milepost 110.6 at East Northfield, MA, a distance of approximately 72.8 miles; 2) freight easement rights over MassDOT-owned track assets between milepost 110.6 at East Northfield, MA and milepost 62.0 at Springfield, MA, a distance of approximately 49.7 miles; and 3) trackage rights over National Railroad Passenger Corporation (“Amtrak”) between milepost 62.0 at Springfield, MA and milepost 0.0 at New Haven, CT, a distance of approximately 62 miles.³

Additionally, PAS owns approximately 76.42 route miles of branch line track. The PAS lines include the following branch line track:

- 1) freight easement rights over MassDOT-owned track assets between milepost 0.0 at North Adams, MA and milepost 4.59 at Adams, MA, a distance of approximately 4.59 miles;
- 2) between milepost 0.0 at Gardner, MA and milepost 1.16 at Heywood, MA, a distance of approximately 1.16 miles;

³ See *Pan Am S. LLC—Acquisition and Operation Exemption—Lines of Boston & Maine Corp.*, FD 35147 (Sub-No. 1), Notice of Exemption at Exhibit 1 (filed June 27, 2008); *Norfolk S. Ry. Co.—Joint Control & Operating/Pooling Agreements—Pan Am S. LLC*, FD 35147 (STB served Mar. 10, 2009); *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35863 (STB served Dec. 24, 2014) (as modified, Mar. 27, 2015).

- 3) between milepost 28.01 at Ayer, MA and milepost 25.7 at Harvard Station, MA, a distance of approximately 2.3 miles;
- 4) between milepost 0.0 at Berlin, CT and milepost 8.4 at Derby, CT, a distance of approximately 42.9 miles, inclusive of freight easement rights over Metro North Commuter Railroad from milepost 27 at Waterbury, CT to milepost 8.4 at Derby, CT, a distance of approximately 18.6 miles;
- 5) freight easement rights over MBTA between milepost 33.72 at Willows, MA and milepost 31.43 at Littleton, MA, a distance of approximately 2.3 miles;
- 6) freight easement rights over MBTA between milepost 0.0 at Ayer, MA and milepost 5.0 at Groton, MA, a distance of approximately 5 miles;
- 7) between milepost 12.16, Rotterdam Junction, NY and milepost 0.0 (CPF 477), near Burnt Hills, NY, a distance of approximately 12.16 miles;
- 8) the Southington Industrial Branch, which is approximately 4.5 miles between Plainville and Southington, CT; and
- 9) approximately 3.7 miles of trackage rights over CSXT between North Haven and Cedar Hill Yard, CT.⁴

B. Interchanges

The PAR System and PAS interchange with a diverse group of partners, including four Class I railroads (CSXT, NSR, Canadian National Railway Company (“CN”), CP) and various Class II and Class III railroads. The PAR System’s network includes 20 interchange locations, and PAS’s Network includes 21 interchange locations. The multiple interchange options throughout the PAR System and the PAS Network results in operating freedom and flexibility for the PAR System and PAS. A list of interchange partners and locations is provided in Tables 3 and 4 below and shown in a map included in Exhibit 1 to the Application. These tables

⁴ See *Pan Am S. LLC—Acquisition and Operation Exemption—Lines of Boston & Maine Corp.*, FD 35147 (Sub-No. 1), Notice of Exemption at Exhibit 1 (filed June 27, 2008); *Mass. Dep’t of Transp.—Acquisition Exemption—Certain Assets of Pan Am S. LLC*, FD 35943, Motion to Dismiss at 7-8 (filed Aug. 14, 2015).

show revenue interchange partners and locations, and the physical interchange locations may be different in certain circumstances.

**Table 3: PAR System/Springfield Terminal
Interchange Partners & Locations**

| <u>Interchange Partner</u> | <u>Location</u> |
|-------------------------------------|---------------------------------------|
| CN | Danville Jct., ME ⁵ |
| CN | Saint John, NB ⁶ |
| Canadian Pacific | Brunswick, ME ⁷ |
| Canadian Pacific | Northern Maine Jct., ME |
| CSXT | Barbers Station, MA (Worcester) |
| CSXT | Boston, MA ⁸ |
| Norfolk Southern | Ayer, MA ⁹ |
| Belfast and Moosehead Lake Railroad | Burnham Jct., ME ¹⁰ |
| Maine Northern Railroad | Mattawamkeag, ME ¹¹ |
| Maine Northern Railroad | Northern Maine Jct., ME ¹² |
| New Brunswick Southern Railway | Mattawamkeag, ME ¹³ |
| New Brunswick Southern Railway | Northern Maine Jct., ME ¹⁴ |
| New Hampshire Northcoast | Dover, NH |
| Pan Am Southern | Ayer, MA |
| Pan Am Southern | North Charlestown, NH ¹⁵ |
| Providence and Worcester | Worcester, MA ¹⁶ |
| St. Lawrence & Atlantic Railroad | Danville Jct., ME |
| Turners Island Railroad | Portland, ME |

⁵ CN accesses Danville Junction via a haulage arrangement with the St. Lawrence & Atlantic Railroad.

⁶ Springfield Terminal accesses Saint John via a haulage agreement with New Brunswick Southern Railway and Eastern Maine Railway.

⁷ The Brunswick interchange connects with CP's Brunswick Branch.

⁸ This interchange is not regularly used.

⁹ This interchange is used only for haulage traffic moving to Walnut Hill, MA / Winchester, MA and for joint Springfield Terminal/NSR intermodal services.

¹⁰ Belfast and Moosehead Lake Railroad has no revenue freight business at this time.

¹¹ Maine Northern Railroad has access to Mattawamkeag via a haulage agreement with affiliate Eastern Maine Railway.

¹² Maine Northern Railroad has access to Northern Maine Jct. via a haulage agreement with Canadian Pacific.

¹³ New Brunswick Southern Railway has access to Mattawamkeag via a haulage agreement with affiliate Eastern Maine Railway.

¹⁴ Maine Northern Railroad has access to Northern Maine Jct. via haulage agreements with Canadian Pacific and Eastern Maine Railway.

¹⁵ This interchange connects to a Springfield Terminal line at Charlestown, NH that is not currently operating.

¹⁶ Physical interchange occurs at Barbers Station, MA.

| | |
|--|-------------|
| New England Southern Railroad (Vermont Rail System) | Concord, NH |
| Milford-Bennington Railroad | Wilton, NH |

Table 4: PAS Interchange Partners & Locations

| <u>Interchange Partner</u> | <u>Location</u> |
|-------------------------------|-------------------------------------|
| Canadian Pacific | Mechanicville, NY ¹⁷ |
| CSXT | New Haven, CT ¹⁸ |
| CSXT | Springfield, MA ¹⁹ |
| CSXT | Rotterdam Jct., NY |
| Norfolk Southern | Ayer, MA ²⁰ |
| Norfolk Southern | Mechanicville, NY ²¹ |
| Battenkill Railroad | Eagle Bridge, NY |
| Central New England Railroad | Hartford, CT ²² |
| Connecticut Southern Railroad | Hartford, CT |
| Housatonic Railroad | Derby, CT ²³ |
| New England Central Railroad | Brattleboro, VT |
| New England Central Railroad | Millers Falls, MA ²⁴ |
| New England Central Railroad | White River Jct., VT ²⁵ |
| Naugatuck Railroad | Waterbury, CT |
| Providence and Worcester | Gardner, MA |
| Pioneer Valley Railroad | Holyoke, MA |
| Springfield Terminal | Ayer, MA |
| Springfield Terminal | North Charlestown, NH ²⁶ |
| Vermont Rail System | Hoosick Jct., NY |
| Vermont Rail System | Bellows Falls, VT |
| Vermont Rail System | White River Jct., VT |

¹⁷ Physical interchange takes place at Mohawk Yard, Glenville, NY.

¹⁸ This interchange is not currently in service. It is used for reciprocal switch delivery for North Haven/New Haven, CT.

¹⁹ This is not a regular interchange. It is used for occasional high-wide and detour movements.

²⁰ This is not a regular interchange. It is used to exchange empty intermodal and automotive equipment when necessary.

²¹ Interchange can physically take place at Mechanicville or Mohawk Yard in Glenville, NY.

²² This interchange is as of January 1, 2021.

²³ This interchange is not currently used for revenue traffic.

²⁴ Interchange traffic with New England Central Railroad is routed via Millers Falls, MA, but the physical interchange is performed at Brattleboro, VT for railroad convenience.

²⁵ This interchange is not currently used for revenue freight.

²⁶ This interchange connects to a Springfield Terminal line at Charlestown, NH that is not currently operating.

C. Yards

The PAR System's and PAS's properties include 12 interchange yards and facilities, which are listed in Table 5 below. The various yards throughout the two systems provide strategic access and proximity to large, fast-growing consumption markets such as New York and Boston.

Table 5: Interchange Yards & Facilities

| Yard | Location |
|-------------------------|--------------------|
| Mattawamkeag | Mattawamkeag, ME |
| Northern Maine Junction | Hermon, ME |
| Waterville Yard | Waterville, ME |
| Rigby Yard | South Portland, ME |
| Lawrence Yard | Lawrence, MA |
| Nashua Yard | Nashua, NH |
| Ayer Yard/Hill Yard | Ayer, MA |
| Fitchburg Yard | Fitchburg, MA |
| Gardner Yard | Gardner, MA |
| Deerfield Yard | East Deerfield, MA |
| Hoosick Junction | Hoosick, NY |
| Mechanicville Yard | Mechanicville, NY |
| Rotterdam Yard | Rotterdam Jct., NY |

D. Intermodal Operations

In total, the PAR System and PAS moved approximately 83,000 intermodal and haulage units in 2019, which accounted for {{REDACTED}} of the 2019 gross revenue of PAS and {{REDACTED}} of the gross revenue of the PAR System. The PAR System and the PAS system include a total of six intermodal terminals and two automotive facilities.

PAS engages in significant intermodal operations, and it is an important link to the Boston market for intermodal and automotive trade flows. In 2019, PAS moved 77,883 intermodal and haulage units, and its gross revenue for intermodal and haulage was {{REDACTED}}. PAS operates the following intermodal and automotive facilities:

- Ayer, MA – a three-track, 10,000-foot intermodal pad with a 300+ trailer parking area; and

- Mechanicville, NY – a two-track, 8,000-foot overhead crane intermodal facility with a 400+ trailer parking area.

These two facilities are strategically located to serve automotive and broader commercial merchandise traffic flows into the Boston metropolitan area. The Ayer intermodal facility is located approximately 35 miles northwest of Boston, MA. It encompasses approximately 52 acres of land and was built to handle a capacity of 75,000 truckload equivalent units (“TEUs”), with the potential to expand to 175,000 TEUs of capacity. PAS has added capacity at the existing Ayer intermodal terminal and constructed an automotive terminal at Ayer.

The Mechanicville facility is located on a strategic route between Chicago and Boston. It is the site of an auto unloading facility and an efficient “filet and toupee” operation, in which the top containers of Massachusetts-bound double-stack, intermodal trains are removed (*i.e.*, “filleted”) in order to permit the trains to fit through the Hoosac Tunnel. On the return trip, single-stack trains stop in Mechanicville to have containers placed on top, or a “toupee,” before heading to Chicago. NSR runs one round-trip train per day between Mechanicville, NY and Ayer, MA that is operated by Springfield Terminal in haulage service as contract operator for PAS.

The PAR System, through Springfield Terminal, also engages in intermodal operations, handling 5,054 intermodal and 1,237 haulage units in 2019. The PAR System/Springfield Terminal loads intermodal traffic in Waterville, ME, destined for Ayer, MA.

E. Labor

Springfield Terminal performs the rail operations of the PAR and PAS networks. Neither PAS nor any of the other rail carrier affiliates of PAR have railroad employees. Details regarding the pre-transaction labor force are described in the Employee Impact Exhibit included with the Application.

F. Commuter and Other Passenger Rail Service

Set forth below is a description of the existing passenger operations on the PAR System and the PAS Network. A map depicting these operations is included in Exhibit 1 to the Application.

i. Amtrak

Amtrak operates the Vermonter service between Washington, DC and St. Albans, VT. This service includes the Knowledge Corridor between New Haven, CT and White River Junction, VT, over which PAS has operating rights. The line between New Haven, CT and Springfield, MA is owned, maintained, and dispatched by Amtrak, while the segment between Springfield, MA and East Northfield, MA is owned by MassDOT and dispatched and maintained by PAS/Springfield Terminal. As of January 22, 2021, the 2 daily trains (1 northbound and 1 southbound) operated by Amtrak have been temporarily suspended due to the COVID-19 pandemic.

Amtrak operates the Valley Flyer service between New Haven, CT and Greenfield, MA, on the same Knowledge Corridor lines described above. Amtrak previously operated 4 round-trip trains per day. Amtrak currently operates a reduced schedule for the Valley Flyer with 2 daily trains (1 southbound and 1 northbound) between New Haven, CT and Greenfield, MA.

Amtrak operates passenger service between Springfield, MA and New Haven, CT, over the same Knowledge Corridor lines described above. As of January 14, 2021, Amtrak operates 8 daily trains (4 northbound and 4 southbound) on this line.

The Connecticut Department of Transportation, in conjunction with CTrail and Amtrak, operates commuter service between Springfield, MA and New Haven, CT, over the same PAS Knowledge Corridor lines described above. As of January 14, 2021, CTrail operates 10 daily commuter trains (5 northbound and 5 southbound) on this line.

The Metropolitan Transportation Authority, through its operating agency Metro-North Railroad, operates commuter service between Waterbury, CT

and Bridgeport, CT. This service includes operation over lines that PAS also operates over using a perpetual freight easement between Waterbury, CT and Derby, CT. The line between Waterbury, CT and Bridgeport, CT is owned by the Connecticut Department of Transportation and maintained and dispatched by Metro-North Railroad. As of January 14, 2021, Metro-North Railroad operates 12 daily commuter trains (6 northbound and 6 southbound) on this line.

Amtrak operates the Downeaster service between Boston North Station and Brunswick, ME. As of January 22, 2021, Amtrak operates 8 daily trains, 4 southbound and 4 northbound. MBTA owns and maintains the line between Boston and the Massachusetts/New Hampshire State line. PAR subsidiaries own and maintain the line between the Massachusetts/New Hampshire State line to Brunswick, ME. The State of Maine owns approximately one mile of the line leading into Brunswick Station in Brunswick, ME. The PAR System/Springfield Terminal dispatches Amtrak trains from and including CPF LJ (near Lowell, JCT) to Brunswick, ME. MBTA dispatches the segment from Boston to CPF LJ.

ii. MBTA

MBTA operates the Fitchburg Line commuter service between Wachusett, MA and Boston North Station. The service operates on PAS-owned tracks between Wachusett, MA (CPF 335) and Fitchburg, MA (CPF 330), and on MBTA-owned tracks for the remainder of the route, over which PAS and PAR subsidiaries hold perpetual freight easements. The Fitchburg Line is equipped with PTC (ATC-ACSES), including the segment owned by PAS. Springfield Terminal dispatches MBTA's trains on the Fitchburg Line from Wachusett, MA (CPF 335) to and including CPF WL, near Willows, MA. MBTA dispatches the line between CPF WL and Boston. MBTA operates as many as 34 weekday daily trains (17 outbound and 17 inbound trains) and 14 weekend daily trains (7 outbound and 7 inbound trains).

MBTA operates the Western Route commuter service between Haverhill, MA and Boston North Station, on a line segment owned and maintained by MBTA, over which a PAR subsidiary holds a perpetual freight easement. Springfield Terminal

dispatches the Haverhill Line between CPF-LJ (near Lowell Jct, MA) and Haverhill MBTA's station. MBTA dispatches the remainder of the route to Boston North Station. MBTA has installed ATC-ACSES PTC on the line. MBTA currently operates a reduced schedule because of COVID-19, with 13 daily frequencies.

MBTA operates the New Hampshire Route commuter service between Lowell, MA and Boston North Station, on a line segment owned and maintained by MBTA, over which a PAR subsidiary holds a perpetual freight easement. Springfield Terminal dispatches the line between MBTA's Lowell Station to and including CPF BY in Lowell, MA. MBTA dispatches the remainder of the route to Boston North Station. MBTA has installed ATC-ACSES PTC on the line. MBTA operates a reduced schedule because of COVID-19, with 17 daily frequencies.

G. Abandonments and Discontinuances

The PAR System, through Maine Central, currently intends to seek STB authority to abandon an out-of-service rail line located in central Maine, known as the Madison Branch. The line runs from Oakland, ME (milepost 0.4) to North Anson, ME (milepost 25.7). The line will be converted to a multi-use trail.

II. Post-Transaction Operations

A. Changes to Train Operations

i. The PAR System

In connection with the Proposed Transaction, CSXT will take over Springfield Terminal's operation of the PAR System. CSXT does not have any current plans to change the existing PAR System routes, patterns, or types of service. Although CSXT may need to modify schedules to ensure efficient service, the basic service is not expected to change. CSXT intends to apply to existing movements on the PAR System the operating practices that have made CSXT a first-in-class rail operator on its existing network. By implementing CSXT's industry-leading operating practices on the PAR System, CSXT will modernize and introduce efficiencies to the PAR System's operations, emphasizing consistency, reliability, and careful data measurement and management.

For example, on a daily basis, the CSXT operating team reviews detailed performance metrics regarding the CSXT system, including charts and data on a wide range of issues, such as train velocity, train length, train tonnage, train delay hours, carload trip plan compliance and failures, on-time originations and arrivals, locomotive miles per day, and extra yard jobs and locals. CSXT makes many of these metrics publicly available on its website at <https://investors.csx.com/metrics/default.aspx>.

Reviewing performance metrics on a daily basis allows CSXT to detect any problems and to make real-time network adjustments as needed to promote and support efficient operations. Additionally, CSXT anticipates operating the PAR System on a scheduled basis, regularizing what CSXT understands are train schedules that are at times inconsistently implemented. CSXT has shown that it can make consistency and efficiency improvements to its existing network, and CSXT looks forward to achieving the same for customers on the PAR System.

As CSXT integrates the PAR System operations into CSXT's operating plan and implements incremental capital improvements to increase train velocity, CSXT expects that it will eventually be possible to decrease the number of trains run on the PAR System, while maintaining the same gross tonnage and routings. As noted below, CSXT expects to make infrastructure improvements in rails, ties, yards and bridges and to implement standard CSXT asset replacement cycles. These improvements can be expected eventually to improve velocity on some segments of PAR System lines and allow CSXT to consolidate some existing train starts on the PAR System, and train lengths may increase.

For example, there may be areas where current speed restrictions require the use of two trains between three rail-served locations, say points A, B and C. A train may be needed to run between A and B and another train may be needed separately to run between B and C. As CSXT is able to increase velocity and otherwise make existing operations more efficient, it may be able to run a single train between A and C, while serving B as an intermediate location. These types of operating

changes are not capable of being identified with more precision at this time, but CSXT expects that such changes will eventually be possible. CSXT anticipates that the majority of these changes will be implemented on the PAR System in largely rural areas north and east of Portland, ME, where longer trains are not likely to disrupt grade crossings. Additionally, as CSXT makes capital improvements to increase velocity, faster movements through grade crossings will help offset any impacts of longer trains.

CSXT expects that no existing PAR System lines will be downgraded, eliminated, or operated on a consolidated basis as a result of the Proposed Transaction. No changes to traffic are expected to result from diversions of traffic from other railroads or other modes of transportation. CSXT expects that superior rail operations will eventually result in the movement of freight from trucks to rail, but such changes will occur over the long term and are not capable of being estimated with more precision here.

ii. The PAS Network

In the Term Sheet Agreement described above, CSXT, NSR, and GWI have agreed that B&E will take over Springfield Terminal's operation of the PAS Network once CSXT acquires Springfield Terminal and Boston & Maine (including Boston & Maine's one-half interest in PAS). B&E has agreed to "step into the shoes" of Springfield Terminal as operator of PAS, providing substantially all of the operating services that Springfield Terminal currently provides on behalf of PAS in substantially the same way.

Under the NSR Settlement Agreement/Ayer Operations Protocol, CSXT and NSR have established certain principles to strengthen existing operations of PAS lines following consummation of the Proposed Transaction. In the Ayer Operations Protocol, CSXT and NSR have agreed that, once CSXT owns a one-half interest in PAS and B&E is the contract operator of PAS, the parties will implement levels of service metrics and goals and a "static yard plan" for traffic moving on the PAS line running through the Ayer switching area (from Harvard, MA to CPF 312), which